REPORT OF THE ENVIRONMENTAL LEGISLATION REVIEW PANEL

91-02239/

January 11, 1991

Honourable Ralph P. Klein
Minister of Environment
130 Legislature Building
Edmonton, Alberta
T5K 2B6

Dear Mr. Klein:

Re: Environmental Legislation Review Panel

At your request, we have undertaken a review of the proposed Alberta Environmental Protection and Enhancement legislation.

In order to complete this report, the Legislative Review panel travelled to twelve locations in Alberta giving the people of Alberta opportunity to apprise the panel of their views on the draft legislation. The panel, having received both written and oral submissions from the public, has prepared this report which includes a summary of these submissions and our recommendations regarding the proposed Alberta Environmental Protection and Enhancement legislation.

We appreciate the opportunity to participate in this process and trust the recommendations contained within will be considered in the redrafting of the legislation.

Brian Evans, Chairman

Dr. Natalia Krawetz
Vice Chairman

Wendy Francis

Lorne D. Howes

Brian K. O'Ferrall

Craig Shaw

Joe Smith

Dr. Donald R. Stanley

CHAIRMAN'S REPORT

On behalf of the Environmental Legislation Review Panel, it is my pleasure to submit the Panel's final report and recommendations.

The Panel was struck on October 2, 1990. Its mandate was to hold public meetings throughout the province thereby providing the public with the opportunity to express their views on the draft Alberta Environmental Protection and Enhancement legislation. Locations, dates, and times of meetings were agreed upon by the Panel and the first meeting was set for October 9, 1990. In total, the Panel travelled to twelve locations, heard 151 oral presentations and received 198 written submissions. Environmental organizations, business and industry, local governments, and concerned citizens all contributed to the process and on behalf of the Panel, I would like to express our sincere appreciation to all those who took the time and made the effort to review the draft and to participate.

While the magnitude of the task within a limited timeframe was apparent to the Panel from our first meeting, each Panel member rose to the challenge and I wish to thank all of them for their energy, enthusiasm and commitment to producing this report.

To our dedicated support staff, it is my pleasure on behalf of the Panel to offer our thanks and gratitude. Special mention is due to Kim Lalonde, support team manager; John Richards, Anna Kozlowski and John Lilley, our analysis team; Marilyn Kansky, technical and research support; the staff from Alberta Environment's Community Affairs Branch; Bert, Nancy and John Van Mechelen, our technicians; our court reporters from J.G. Moore and Associates Ltd; and Beth Munroe-Hill, Peggie Graham and Rebecca Luce-Kapler from Words' Worth who assembled our report into a clear and concise text, and last but certainly not least, I'd like to thank Jean Andryiszyn, our logistics consultant and our transportation team who ensured that we arrived on time at each location!

An overwhelming majority of those who either appeared before or wrote to the Panel complimented the Honourable Ralph Klein, Minister of the Environment, and the Department of the Environment for the vision of involving the public in the legislative process through circulation of the following:

a) The Vision Document Alberta's Environment Toward the 21st Century which detailed the principles of the Department and sought the environmental vision of Albertans;

b) the "Thanks" document which tabulated the responses of Albertans to the Vision Document; and

c) the draft legislation.

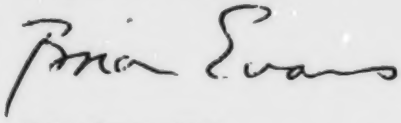
I am pleased to have the opportunity to convey these compliments. Many of these same people, however, requested more notice time in the future to ensure the maximum opportunity for effective input.

While the Panel received comments on most sections of the draft, in this report the Panel has identified major recommendations which it feels must be considered prior to drafting the final Act. Although the reporting date has been extended somewhat from December 21, 1990 to January 11, 1991, in order to give Albertans more time to provide the Panel with their written

submissions, the Panel has not had sufficient time to address each and every comment; however, the transcript provides a word for word history of the proceedings.

In conclusion, the Panel is unanimous in stating that this process has been extremely beneficial in providing Albertans with the opportunity to have direct input into the formulation of critical environmental legislation and on behalf of the Panel, and those Albertans we heard from, we wish to thank the Minister of the Environment for the opportunity to participate.

Respectfully submitted,



Brian Evans, Q.C.
M.L.A. Banff-Cochrane
Panel Chairman

FOREWARD

The Panel prefaces its recommendations with the following comments related to the context of this report.

Public Input

The Panel applauds the Minister for this unique initiative in putting the proposed legislation to the public for review.

The Panel received a variety of presentations from people who represented a broad spectrum of Albertans: individual citizens, grassroots organizations, school children, business and industrial organizations, local governments, and environmental groups.

Concern was expressed for the quality of Alberta's environment, and the wish that it be maintained and protected. The public's overriding concern for environmental protection by no means diminishes the many valid concerns expressed about the implementation, practicality, and implications of other aspects, for example, economic development, of the proposed legislation.

At every location, presenters dealt not only with the substance of the proposed legislation but also with the process used to receive public input. Most were extremely frustrated by the short timeframe of the public meeting process. On the basis of these comments, the Panel strongly encourages the Minister to consider the following principles of public consultation in future in order to ensure informed participation and a credible process:

- **ensure that documents are available to the public sufficiently in advance to allow adequate time for review;**
- **ensure that regional government offices, stakeholders and the general public are notified through a variety of means so that potentially interested parties are aware of the process, its deadlines, and meeting dates;**
- **announce actual public meetings or hearings sufficiently in advance so people can accommodate them in their schedules;**
- **provide advance public information meetings at each meeting location, so people can ask questions and receive background documents as well as discuss or modify the process.**

The Panel endorses the Minister's intent to establish a public review process for the draft regulations related to the proposed legislation.

Timing

The Panel understands the Minister's desire to have the legislation passed in the 1991 Spring Session of the Legislative Assembly of Alberta. In terms of the Panel's work, this resulted in a condensed timeframe. While we would have preferred more time to consider the submissions and deliberate over our recommendations, we agreed to do the best job within the time afforded by such an ambitious deadline. As a result, this report, while including what the Panel perceives to be the key issues of concern to

the public should not be interpreted as a thorough or definitive analysis of the draft legislation.

The Legislation

The Panel understands very well that the task of incorporating nine existing Acts into one comprehensive Act is a difficult and demanding process. Reservations were expressed by the public and are shared by the Panel that the draft legislation does not or may not contain all of the provisions of the nine pieces of legislation it purports to incorporate and may not represent a net improvement in Alberta's existing legislative regime. This issue must be carefully and urgently addressed during the redrafting of the Act.

The Panel urges the Minister to direct those who are responsible for redrafting the Act to study the submissions received by the Panel and consider implementing many of the excellent recommendations for improvement.

The Panel's Approach

To accomplish our task, we first considered the submissions made both in person and in writing, and then identified key issues and areas of recommendation. We concentrated on these key issues while acknowledging that the submissions dealt with many additional points which the timeline precluded from further, in-depth consideration. This report contains an overview of each key issue, a summary of public comments, followed by our comments and recommendations.

> **Our recommendations represent a general consensus by Panel members; that is, there are no recommendations in our report with which members of the Panel are in serious disagreement.**

The Panel relied extensively on the analysis of public submissions undertaken by staff as a means of ensuring that all concerns had been systematically grouped and summarized. The Panel wishes to express its sincere appreciation for the quality of the support staff's work and their commitment, dedication and professionalism.

REPORT OF THE ENVIRONMENTAL LEGISLATION REVIEW PANEL

TABLE OF CONTENTS

1. Letter of Transmittal

2. Chairman's Report i

3. Foreward iii

4. Key Issues:
   Overview of Public Comments
   Summary
   Panel Comments and Recommendations

i.	Name of the Legislation	1
ii.	Preamble to the Legislation	3
iii.	Sustainable Development/Environment and Economy	5
iv.	Public Involvement	9
v.	Education	14
vi.	Access to Information	17
vii.	Assistance with Environmental Concerns	19
viii.	Definitions	21
ix.	Discretionary Powers	26
x.	Environmental Impact Assessments	28
xi.	Approvals	38
xii.	Contaminant Release	43
xiii.	Conservation and Reclamation	45
xiv.	Waste Minimization and Recycling	51
xv.	Pesticides	53
xvi.	Human Health	56
xvii.	Polluter Pays	59
xviii.	Role of Local Government	62
xix.	Protected Areas	65
xx.	Dispute Resolution Mechanisms	67
xxi.	Environmental Protection Orders	69
xxii.	Enforcement	72

5. Panel Biographies 79

6. Appendices:

A.	Glossary of Terms Used	81
B.	Projects or Activities	82
C.	Terms of Reference for Public Meetings Regarding the Alberta Environmental Protection and Enhancement Legislation	84
D.	The Public Meeting Process	86
E.	Locations, Dates, Attendance	89
F.	List of all Individuals/Groups Making Submissions	93

NAME OF THE LEGISLATION

Overview of Public Comments

A number of participants strongly criticized the use of the term "enhancement" in the title of the legislation. In their perception, the environment cannot be "enhanced". This term "reflects a misunderstanding of the nature of the environment," and it implies "defectiveness of the environment."

Comments

- Some members of the public requested the deletion of this term from the title, and some suggested its replacement by the term "restoration" in the Act.

NAME OF THE LEGISLATION

Panel Comments and Recommendations

Based on public concerns regarding the importance of protection of the environment and concerns regarding use of the term "enhancement", the Panel makes the following recommendation:

> **that the name of the legislation be changed to The Alberta Environmental Protection Act (AEPA) and the term "enhancement" be removed from the provisions of the legislation.**

PREAMBLE TO THE LEGISLATION

Overview of Public Comments

Many presenters were concerned that the proposed Act does not contain a clear statement of its intent. They requested the legislation include a preamble declaring the "spirit of the intent of the new Act" or, at least, a clear statement of its purpose.

In the opinion of the public, Section 2: Matters to Be Considered may play the role of a preamble.

Comments

- In respect to Section 2, the following amendments were suggested:
  - that a preamble be added to Section 2 starting with the words "it is the intent of this Legislation...";
  - that Section 2 be amended to remove the potential for abuse of power;
  - that there will be due consideration of all factors in each case, and guidance as to whether any factors ought to be considered in priority to others;
  - that Section 2 include the clear preference for prevention rather than remedial action in dealing with environmental contamination;
  - that economic incentives, including tradeable emission rights (See Appendix A, Glossary of Terms), be considered and made available to industry;
  - that with respect to the use of alternative energy-efficient equipment and technology, a provincial government program of economic instruments be established; in addition to reducing air pollution, this program would provide energy security for business and for the general public.

PREAMBLE TO THE LEGISLATION

Panel Comments and Recommendations

The Panel recognizes the role of Section 2 of the draft legislation in setting the overall tone of and providing guidance to interpreters of the Act. However, there were repeated requests by those making submissions to the Panel that the legislation have a preamble which sets out the purpose of the legislation. Accordingly, the Panel makes the following recommendations:

The following Preamble should be inserted at the beginning of the draft legislation:

"WHEREAS the Government of the Province of Alberta is committed to ensuring the adverse effects of economic activity on the environment are minimized so as to sustain the environment's overall integrity;

AND WHEREAS sustaining the environment's overall integrity requires an environmental impact assessment process which identifies and evaluates the impacts of a proposed project on the environment and prevents approval of projects which do not sustain the environment's overall integrity;

AND WHEREAS the public is entitled to have meaningful involvement in decisions concerning the environment and to have access to all information about or related to the environment;

AND WHEREAS it is equitable that polluters pay for the consequences of their actions;

AND WHEREAS the prevention and control of pollution require accurate monitoring of the release of contaminants into the environment, reduction in the use of pesticides and hazardous substances, prompt and universal enforcement of environmental laws and appropriate punishment for law breakers;

AND WHEREAS protection of the environment requires a change in attitudes and behaviours of individuals, business and the Government, and education about the environment is essential to bring about that change;

AND WHEREAS individuals, business and Government require incentives to take full account of the consequences on the environment of their actions;

AND WHEREAS reduction of waste and reuse and recycling of materials should be brought about by reducing production of excess materials, education of the public and encouragement of a recycling industry;

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:"

Other than where changes are recommended elsewhere in this Report, Section 2 should also remain in the legislation.

SUSTAINABLE DEVELOPMENT/ENVIRONMENT AND ECONOMY

Overview of Public Comments

Sustainable development, one of the key concepts in the proposed legislation, was at the centre of public discussion and controversy; thus it generated a large number of comments.

Comments

- A number of presenters criticized the proposed Act for not having a clear statement of the intent (to protect the environment) from the outset. They said "from the very first, the proposed legislation muddies the waters at their source, by talking of economic aspects of 'sustainable development'," and that the proposed Act should have a preamble declaring the "spirit of intent of the new Act."
- Due to the lack of definition of the term "sustainable development," or of its description in the Act, a large number of participants expressed confusion by its use and asked for clarification.
- More than half of the comments endorsed or supported the philosophy of sustainable development.
- Supporters of sustainable development felt that development decisions should ensure a wise use of resources while at the same time consider the maintenance of a healthy economy. They want to see a process by which all Albertans could discuss "what it is they want for the future of Alberta," making sure that "all the pieces fit together" before any more development is promoted.
- This need for "balancing" of economic and environmental considerations was expressed in all hearings in statements such as "Governments, the private sector and the public must assess the economic, social, and environmental costs of all environmental initiatives, and balance the costs and benefits when making plans for environmental protection."
- Some participants said "sustainability should be an overall policy of the government." Others complained that the Government of Alberta does not follow this principle in practice (e.g., in forestry and agricultural practices).
- There were many negative comments about the use of the sustainable development concept, to the extent of some requesting its deletion. Participants argued:
  - environmental protection should be central to environmental legislation; hence, sustainability should not be part of the Department's mandate;
  - the concept clouds environmental issues; the phrase "sustainable development" is so misused and misunderstood that it has no place in the proposed legislation;
  - society has to recognize the "inappropriateness of economic analysis and its inability to place a complete dollar value on environmental resources and ecological effects";
  - the wording in Section 44 implies subordination of environmental protection to economic decisions;

- Section 2(b) be amended to read: "the protection, enhancement and wise use of the environment for the present and the future should be 'the prime consideration' " rather than merely "a consideration."

- A lot of attention was given to the Sustainable Development Co-ordinating Council, particularly with respect to the following:

  - membership of the Council (who should or should not be included);

    * some expressed distrust in having the Council selected from among government officials

    * some requested that the membership of the Council be expanded to include representatives of the Minister of Tourism and the Minister Responsible for Native Affairs

    * some requested wider health representations, i.e., The Health Unit Association of Alberta, The Public Health Advisory and Appeal Board, The Alberta Hospital Association

    * some were concerned that the public has no opportunity to participate, and some participants suggested that representatives from environmental groups, the scientific community, municipalities, and aboriginal groups be included in the membership of this Council

    * a few requested the Chairpersons of The Energy Resources Conservation Board (ERCB) and The Natural Resources Conservation Board (NRCB) be excluded from membership on this Council because of a potential conflict of interest

  - mechanism to achieve consensus;

    * participants were concerned about the lack of a mechanism for achieving consensus among departments with conflicting interests or approaches to any issues considered by this Council; some requested that specific roles or involvement of the departments be mandated to avoid conflict

  - access to information;

    * presenters requested public access to all reports and recommendations of this Council; they also requested that members of the Legislative Assembly receive this information as they represent the people of Alberta.

- Many members of the public argued that Alberta Environment's sole responsibility should be environmental protection and that sustainable development should not be part of its mandate. These presenters therefore requested that the sole mandate of the proposed legislation be environmental protection, not the balancing of protection and development.

SUSTAINABLE DEVELOPMENT/ENVIRONMENT AND ECONOMY

Panel Comments and Recommendations

The Panel recognizes the public's concerns regarding the need to define the term "sustainable development". The Panel recognizes that the term is defined in the international literature (based on the Brundtland report) and that a sustainable development strategy is being worked on by the Alberta Round Table on Environment and Economy. The Panel, therefore, makes the following recommendation:

> **Section 2 Matters to be Considered**
>
> **Section 2 (c) should be amended as follows:**
>
> **"(c) the principle of sustainable development, which ensures that the adverse impact on the environment by economic activity is minimized so as to sustain the environment's overall integrity, should be applied to allow the development of Alberta's economy in an environmentally responsible manner and to integrate protection of the environment into economic decisions at the earliest possible stages."**

The Panel believes that environment and economy are intertwined; so it is difficult if not impossible to make a decision about one of these aspects without affecting the other. Therefore, the Panel recommends

> **that the integration of both sustainable development and protection of the environment is a matter for all departments and agencies of the Government, not just for Alberta Environment.**

The Panel believes that it is important to give legitimacy to environmental considerations at the decision-making table. While the Panel recognizes the need for a viable and vibrant economy, public input suggests greater emphasis be placed on protection of the environment. In view of the recommendations above, the Panel suggests that protection of the environment be the responsibility of government as a whole with the Department of the Environment having the prime responsibility. The Panel makes the following recommendations:

> **Section 2 Matters to be Considered**
>
> **Section 2(b) should be amended as follows:**
>
> **"(b) the protection and wise use of the environment for the present and future should be the prime consideration;"**

In terms of achieving sustainable development in the province, the Panel recognizes and supports the role of the Alberta Round Table on Environment and Economy. While the Round Table will develop a sustainable development strategy, there are some basic principles which the Panel believes are necessary for the implementation of sustainable development and which should be recognized now in the draft legislation. Therefore the Panel recommends the following:

> **The legislation should enable full consideration of all factors in environmental decision-making.**

The legislation should support a long-term orientation and the integration of ecological integrity with economic development.

The legislation should allow for implementation of the "polluter pays" principle.

The legislation should enable the use of economic instruments to protect the environment (such as tradeable allowances and emissions fees) as well as "command and control" mechanisms. (See Appendix A, Glossary of Terms.)

The legislation should support the development of overall goals or environmental objectives based on the concept of effectiveness as it relates to the health of the environment.

The Panel recognizes that sustainable development is consistent with the principle of shared responsibility because it will require the cooperative action of many parties. Consistent with the idea that responsibility for implementing sustainable development rests with government as a whole, as an interdepartmental matter rather than being the responsibility of a single department or agency, the Panel supports the concept of the Sustainable Development Coordinating Council. A number of specific recommendations regarding the provisions establishing the Council follow:

Sections 5 - 9 Sustainable Development Coordinating Council

It is recommended that section 6(1) be amended as follows:

"The Coordinating Council is responsible for coordinating, reviewing, and making recommendations to the Minister on interdepartmental matters related to sustainable development and protection of the environment."

It is recommended that Section 6(2) be amended as follows:

"The Coordinating Council shall make its recommendations and reports to the Minister, who shall immediately submit copies to members of Executive Council." (Note: subsections (a) and (b) deleted.)

It is recommended that Section 7(1)(a) be amended to include members as designated by the Minister of Tourism and the Minister Responsible for Native Affairs.

OPPORTUNITIES FOR PUBLIC INVOLVEMENT

Overview of Public Comments

Public involvement received the most attention in the legislation review process. This subject was raised frequently in relation to all parts of the proposed Act, but it received the largest number of comments regarding Part 2: Environmental Impact Assessment (EIA) and Approvals where it was a top priority issue.

Comments

- Presenters asserted their right to be directly involved in "all aspects of the Government's operations and development with effects on the environment." They claimed their legal right "to be informed," "to have input into decisions," and "to be involved in follow-up." People believe that meaningful public involvement, "not empty words to that effect," should be one of the objectives of the Act.

- Many submissions proposed that Alberta Environment maintain more direct contact with the public, with more representatives going to communities and talking to people, rather than sending out "fancy publications." These representatives could organize community workshops to address and discuss broad environmental issues; they could assist citizens in carrying out proposed projects (e.g., recycling), and could help them "to get through the proper hoops."

- Several submissions requested that the government establish a mechanism by which public input would be received and acted upon, and by which the public would be informed regarding how their concerns affected decision-making (e.g., follow-up reports). This mechanism would include a predefined, fixed timeframe for public involvement in all areas of environmental management and decision-making; the present draft of the Act fixes times only in some sections (e.g., it does in Section 16(2) and Section 21, but it does not in Section 61(1) and Section 62(3)).

- The public suggested that conflicts on environmental issues between the government and the public could be avoided by timely and adequate public consultation where there could be an "informational interaction" and when all parties could work within a consultative and cooperative framework, rather than a confrontational one.

- Some dissatisfaction was expressed about public hearings because the government "has never paid much attention to the decisions and recommendations from the hearings," and "the public's input in hearings was ignored." There were some positive comments about the Environment Council of Alberta's (ECA) public hearings, particularly with respect to the preparation of background materials and the scope of participation (not limited to those directly affected). The public emphasized the importance of the ECA as a vehicle by which small groups could carry their concerns to the government.

- Under Section 14, participants requested an opportunity for input into the development and review of environmental objectives and guidelines, standards and regulations. "Regulations and standards need to be spelled out in order that all members of the public, including industry, know where they stand in relation to the laws that regulate their behaviour."

- Some submissions advocated provisions for a periodic standard review process "to ensure that the most current scientific industrial standards and technologies are used." Some of the participants demanded a "stringent and specific protocol...for an ongoing review of standards and regulations."

- There were specific requests for the amendment of Section 14(1), Development of objectives and guidelines in Part I: Administration. Participants suggested the following:

  - that this section reflect the purpose of the Act (i.e., environmental protection), rather than the Minister's functions and duties, and that it should include the duty to develop a long-range environmental plan;

  - that this section also specify that objectives and guidelines be developed through public consensus;

  - that this section ensure that the environmental quality objectives which specify goals are stated in qualitative and quantitative terms so they can be monitored and enforced; the public was concerned that the draft "fails to tell what emission limits would be set, and how much will be determined by definite regulations, and how much will be left to guidelines" and to discretion.

- Under Section 79 (Regulations by Minister in Part 3: Contaminant Release), the public made similar requests to those under Section 14. They want to be involved in setting limits for release of contaminants, and they request that such releases be monitored and recorded, and that the regulations/standards be reviewed on a regular basis.

- In some submissions a "partnership approach" through round table or workshop sessions was suggested for developing standards and regulations.

- Public involvement in the EIA process and approvals was stressed in discussions of Part 2 of the proposed Act. Two areas of participation of most concern were voiced:

  - public participation in developing Terms of Reference for EIAs;

  - equal opportunity to participate.

- The subject of public involvement in monitoring activities and enforcement was frequently commented on in relation to Part 11: Enforcement. Regarding Section 165 (Establishment of programs by Minister), many submissions advocated more opportunity for public involvement and rapid department response to complaints. The following suggestions were also made:

  - that the public be provided with follow-up information;

  - that a reporting program like the successful "Crimestoppers" or "Report a Poacher" be established, through which the public could report on activities detrimental to the environment without fear of retribution;

  - that rewards be given for information leading to successful convictions;

  - that in addition to the proposed Act's provisions allowing workers to refuse to participate in environmentally dangerous activities, the legislation should also expressly protect from retribution, including dismissal, workers who report offences or who otherwise further the objectives of the Act;

- that although most submissions dealing with Section 166 (Application for Investigation) applauded its inclusion, some from industrial organization questioned the need for this section; they proposed that should it be included, provisions be added which would discourage initiating a frivolous or unwarranted investigation;
- that a copy of the application be filed with the accused as well as with the Director and that there be a time limit on the period between the alleged offence and the application;
- that the requirement of "two persons" to apply and that they be "not less than 18 years of age" be changed or deleted;
- that in order to make this provision of the proposed Act more preventative than reactive, the words "or have reasonable grounds to believe that an offence may be committed" be added; as well, submissions proposed inclusion of confidentiality on behalf of the applicant.

- A few participants raised the issue of lack of opportunity for public involvement in the Sustainable Development and Co-ordinating Council (Section 7), Advisory Committees (Section 10) and Referral Committees (Section 12).
- A few comments on Advisory Committees suggested that their function could be performed more appropriately and effectively by the Environment Council of Alberta. Some made a suggestion that Referral Committees instead of Advisory Committees make policies, and that the committees' recommendations be published before the government makes final decisions.
- Comments regarding Referral Committees indicated that the public would like these committees comprised of persons who are independent third parties in order to create an independent, non-political board. They also suggested there be provisions in the Act to include the general public, interest groups, and experts on these committees. They advocated that the committees' reports be made public.

OPPORTUNITIES FOR PUBLIC INVOLVEMENT

Panel Comments and Recommendations

The Panel believes the provision of opportunities for public involvement is essential to environmental decision-making and is consistent with the Government's policy of "shared responsibility". These opportunities should be available at the earliest possible stage and at all levels, including the development of policies, objectives, guidelines, standards, and regulations; in the environmental impact assessment process and the approvals process; and in monitoring and enforcement. Public involvement must include education and access to information.

Alberta Environment should have a clear public involvement policy which addresses the roles and responsibilities of Government and the public, the timing and objectives of public involvement, flexibility, and process alternatives.

In order to address the general need for meaningful public involvement at all key stages in decision-making, the Panel makes the following recommendations:

Section 10-11 Advisory Committees

In order to address the need for public input in the development of policies and programs, the legislation should allow advisory committees to be empowered to obtain public input and should establish a standing advisory committee to obtain public input on development of policies and programs on an ongoing basis.

Section 12 Referral Committees

It is recognized that these referral committees are intended to facilitate interdepartmental consultation. It is recommended that Section 12 be amended to clarify that any review accomplished through these government referral committees is for consultation purposes and does not replace any other requirements for environmental impact assessment or approvals, as provided in the legislation.

Section 14 Development of Objectives and Guidelines

In order to emphasize the need to consult the public in the development of objectives and guidelines, Section 14(1) should be amended as follows:

"Having regard to Section 2 and for the purpose of protection of the environment, the Minister, after receiving public input, shall develop and publish..."

Section 14(2) should be amended as follows:

"The Minister may make regulations respecting the manner of receiving public input about the development of objectives and guidelines referred to in subsection (1) and the manner of publishing the guidelines."

Provisions should be added to this section to ensure that the Minister will consider objectives and guidelines when developing regulations.

Section 79 Regulations by Minister (Part 3: Contaminant Release)

In order to address the need for public involvement in the setting of standards, provisions should be added to this section allowing for public input.

There should be opportunities for public involvement in the development of all regulations.

There should be opportunities for public involvement in ongoing monitoring activities and in enforcement.

Recommendations on public involvement in the environmental impact assessment process and in the approvals process are found under other sections of this report.

EDUCATION

Overview of Public Comments

The need for environmental education was a subject frequently discussed in connection with all parts of the proposed Act and it was emphasized by everyone who made a comment about education. The large number of comments received on this subject shows how very strongly Albertans feel about the issue.

Comments

- Presenters urged that an appropriate recommendation stressing the importance of environmental education be made to the Minister of Education.
- People want schools in Alberta "managed in an environmentally sound manner."
- Public environmental education should be a mandatory element of both the elementary and secondary school curricula.
- Presenters recognize that environmental behaviour cannot be regulated since it depends on individual attitudes and values which, however, can be changed through education. Albertans believe environmental education is a "key to a better society" in which people are willing to "balance their inconveniences with environmental quality and human health."
- Environmental education is also a precursor to public involvement in development of regulations.
- Community and grass-roots organizations could be used to assist with public education on environmental issues. It was also suggested that the Environment Council of Alberta adopt an educational role.
- The Act should "ensure provisions to coordinate the environmental policies and programs of all levels of government, and include a venue to establish an environmental education curriculum."
- Albertans believe they are responsible for their environment, and that government has a responsibility to increase public awareness. People are willing to help improve the quality of the environment and "start doing things differently," and they want the government to show some initiative, give direction and take the lead.
- The public requested implementation of a major public education program on risk so that the public understands the risks and costs of activities which impact on the environment.
- Government help in designing and developing curriculum on recycling educational programs was requested.
- Submissions indicated need for more government public education efforts about REDUCE AND REUSE, aimed at changing consumptive lifestyles.
- Presenters asked for development and implementation of educational programs on the use of fertilizers and pesticides.

- Industry should be required to display more information about recycling on product labels and at recycling depot bulletin boards, members of the public advised.

- Some submissions requested more information be given to farmers and urbanites on organic farming methods and environmentally friendly alternatives to pesticides.

EDUCATION

Panel Comments and Recommendations

The Panel believes that education is essential to creating awareness of the environment and to changing attitudes and behaviours in ways that will benefit the environment. Educational opportunities encourage information-sharing and are a pre-requisite to meaningful public involvement. Government support for education is consistent with the policy of "shared responsibility"; therefore, government leadership and direction should support individuals in achieving personal responsibility for protection of the environment.

The Panel understands that the Department of Education is currently working with the Department of Environment to incorporate environmental education as an integral element in curricula.

In order to address the need for education, the Panel makes the following recommendations:

> **Section 13(g) Powers and Duties of the Minister**
>
> **A new subsection should be added as follows:**
>
> **"shall develop, publish and distribute or cause to be developed, published and distributed, a range of educational materials with respect to the quality of the environment and shall ensure that programs to educate the public about the quality of the environment are developed and implemented."**
>
> **Section 13(g) should be amended as follows:**
>
> **"may gather, publish and disseminate information relating to any aspect of the environment by any appropriate means."**
>
> **Part 7 Minimization of Waste and Recycling**
>
> **Provisions for educational programs regarding waste minimization and recycling should be included in this part.**

ACCESS TO INFORMATION

Overview of Public Comments

As indicated by a large number of comments received with respect to Section 40: Information Public, access to information is a very sensitive public issue. Albertans feel very strongly about their right to full information about the environmental issues in the province as well as the government's response to these issues.

Comments

- The majority of participants requested full disclosure of information used in the decision-making process, and a commitment to the inclusion of freedom of environmental information in the legislation. The provision that the Minister or the Director may withhold information "is insulting to the citizens of Alberta and is certainly contrary to any reasonable standard for public access to information." Section 40 makes a "mockery of the principle of public disclosure."

- Some participants acknowledged that confidentiality of business information may be necessary, and in these cases there should be a procedure to deal with confidentiality, criteria and guidelines for confidentiality in the Act, and a mechanism to provide independent adjudication to a confidentiality claim.

- As presently written, the proposed Act leaves freedom of information at the sole discretion of the Minister or Director. This kind of discretion is a "wide open door for political abuse."

- Section 40 should make provisions for the government to list documents that it has decided to withhold, together with the reason for doing so.

- Section 40 "should be clear in its declaration of the rights of the public at large to all information, and in the sections of the legislation that deal with the issuance of reports and approvals, etc. All these clauses should read 'shall be public information'." At a minimum, the Director, the Minister or other parties "should be empowered to compel production of relevant financial information on a confidential basis which may be taken into consideration in the regulatory, approval, licensing, or enforcement processes."

- The "State of the Environment" report received full public support; however, participants voiced the following concerns:

  - what data will be collected for the report, who will provide these data, and who will have access to the raw data;

  - the report should include trend analyses;

  - that "mechanism and substance of the report are specified";

  - that the report should provide meaningful environmental information and "not be a compendium to Alberta Environment's activities," but "be at arms' length from the political process."

ACCESS TO INFORMATION

Panel Comments and Recommendations

The Panel believes that the public should have access to all information provided to the Minister or Director related to applications for approvals and the administration of the Act. The public should also have access to all information provided in applications made to the Natural Resources Conservation Board and the Energy Resources Conservation Board. There may be concerns regarding confidentiality for business reasons. While the Panel does not recommend an exception for confidential business information, if a clause is needed to provide for confidentiality, this decision should be made on a case-by-case basis. Such a decision could be achieved through an impartial review process such as the Board of Review or the courts. The Panel recommends the following:

> **Section 40 Information Public be amended to read**
>
> **"all information provided to the Minister or the Director in the course of the administration of this Act is public information and shall be released to the public."**
>
> **With reference to the recommendations regarding enforcement, there should be a requirement to include in Alberta Environment's departmental Annual Reports a statistical summary of the various enforcement actions taken over the year.**

The Panel endorses the publication of an annual State of the Environment Report.

ASSISTANCE WITH ENVIRONMENTAL CONCERNS

Overview of Public Comments

Several submitters commented on difficulties they had when dealing with the government on environmental matters either when seeking advice or lodging a complaint. It was noted, however, that the attitude of Alberta Environment toward requests for information had improved considerably in recent months.

Comments

- Alberta Environment could facilitate public input by the following:
  - a 1-800 number, well-publicized and in every phone book;
  - a centralized information base which is easily accessible to the public;
  - faster response to complaints;
  - personal follow-up with the complainant;
  - creation of an environmental ombudsman who would have the power to act independently of provincial government departments.

ASSISTANCE WITH ENVIRONMENTAL CONCERNS

Panel Comments and Recommendations

The Panel recognizes two areas of concern raised by presenters. Improvements could be made to assist the public with issues and concerns and to address public frustration with access to government departments.

The public expressed a need for an impartial review of environmental complaints on which the government has taken no action or has made no response. Rather than establishing a separate process, the Panel understands that the province's Ombudsman has authority regarding matters related to government departments and agencies administering environmental matters.

The panel recommends the following:

> **To facilitate members of the public attempting to obtain information or assistance with a concern related to the environment, the Government should offer a "one-window" approach. The objective would be to provide direct and timely responses, to provide information, to address any concern or undertake any necessary investigation.**

DEFINITIONS

Overview of Public Comments

The majority of those involved in the proposed legislation review process expressed interest in and concern about the definitions included in the draft. Various deficiencies were identified as was a need for new definitions for a number of terms.

Comments

- The proposed Act contains too many undefined terms.
- Many definitions are vague; they lack overall precision and specifics; they are open to interpretation, and may result in confusion.
- The wording used in several definitions broadens the scope of the definitions and may lead to future liability.
- Section 1(a) Activity: The term activity which is "central to the administration of part 2," should be defined and included either in the Act or in the regulations. Participants suggested that such a definition should include "all significant sources of pollution" or the Act should include a "list of activities or things covered by the Act."
- Section 1(b) Adverse effect: Participants were concerned about evaluating the consequences of the proposed legislation "until it is known how 'adverse effect' will be defined." "Experience tells us that great attention must be paid to such a definition if the Act is to be enforceable."
- There should be appropriate criteria to define when an adverse effect is deemed to have taken place.
- The base of "adverse effect" could be expanded to include socio-economic effects.
- The term could be defined broadly as in Section 1(a) of the Ontario Environmental Protection Act.
  - "adverse effect means any effect that may be considered to be injurious, immediately or after, or in the course of a short or long period of time, to human health or well-being, to the interacting natural systems, or the aesthetic quality of the environment."
- Section 1(d) Animal: This definition was not clear to the public particularly because of its omission of humans. Presenters said the assumption made in the present definition implies that "our species (human) is somewhat superior to other animals." In their opinion, "this should be questioned." Some suggested that the definition be amended to read " 'animal' means any life form which is not a plant."
- Section 1(j) Contaminant: Participants indicated the interdependence with the definitions of "adverse effects" and "hazardous substance", and their importance for the enforcement of the Act. They requested a clear definition of the term, one that would specify releases of contaminants.

- Section 1(r) Hazardous substance: Those concerned with the definition of "hazardous substance" requested the following:
  - specific criteria of what constitutes a hazardous substance;
  - a more precise timeframe for "long-term adverse effects";
  - a list of hazardous substances updated regularly by scientific experts;
  - coordination of this definition with the definition of a "toxic substance" under the Canadian Environmental Protection Act (CEPA);
  - inclusion of herbicides into the classification of "pesticides".
- Section 1(s) Hazardous waste: Some participants asked for a precise definition, consistent with that used in the guide to the proposed legislation. Definitions of "non-hazardous waste" and "industrial waste" were also requested.
- Section 1(aa) Open body of water: Comments on this definition addressed the following:
  - exclusion of smaller bodies of water (i.e., lakes and sloughs having an area of less than 10 acres) from protection;
  - exemption of municipal reservoirs (why municipal reservoirs are exempted and why irrigation reservoirs are not);
  - "open body of water" should exclude off-stream cooling lakes specifically constructed for the purpose of power plant condenser water cooling.
- Section 1(bb) Owner: Participants were concerned that the definition of "owner", with regard to land, is a restrictive one which "does not necessarily include many beneficial owners of land, or owners of interests in land who may control the land without being in possession." Some suggested that subsection (i) be expanded to include corporations, government agencies, etc.
- Section 1(gg) (ii) Potable water: Private water wells should be included in this definition. The definition of potable water should be included in Section 110 (Definitions under Drinking Water), and the terms "ground water" and "surface water" should be removed from this section.
- Section 1(kk) Reclamation: Some participants were concerned that the definition of reclamation does not address the environment as a whole. Some members of the public suggested a "proper standard should require reclamation to restore the biological productivity of the land."
- Section 1(yy) Watercourse: Watercourse should exclude ditches and drainage works on plant sites or mines used to collect surface run-off effluents in a waste water management system. The definition could be amended to read "the bed and shore of a river, stream, lake, creeks, lagoon, swamp, marsh or other natural body of water, whether it conveys or contains water continuously or intermittently."
- Section 1 (aaa) Well: Clarification was requested about whether water wells are included as part of the definition.

DEFINITIONS

Panel Comments and Recommendations

The public expressed concerns regarding a number of definitions.

The term "adverse effect" is one of the key provisions of the draft legislation and should be defined in the Act, not in the regulations. In Section 68, "adverse effect" delineates circumstances where the Director may not issue a certificate of variance. As part of the definition of "contaminant" and "hazardous substance", "adverse effect" is the trigger for regulatory control over those substances in Parts 3, 9, and 10. "Adverse effect" defines the Director's rights to issue an environmental protection order respecting contaminants in Sections 77 and 78, respecting drilling of water wells in Section 103 and respecting hazardous substances and pesticides in Section 142.

An inspector's right to issue an environmental protection order following a reclamation enquiry in Section 90 is also triggered by an "adverse effect". The existence of an "adverse effect" gives rise to an investigator's duty to enter and inspect premises and to stop and inspect vehicles, aircraft and vessels in Section 168. Finally, the potential for an "adverse effect" authorizes an investigator to issue an enforcement order under Section 171.

As these provisions are intended to protect the environment, the term which triggers them should reflect and be defined by harm to the environment. A broad definition is needed but discretion must be exercised by the Director in administering the legislation. The public clearly expects Alberta Environment and the Director to respond and take appropriate action where required. Accordingly, the Panel makes the following recommendations:

> **The term "adverse effect" should be replaced throughout the legislation by the words "adverse impact on the environment."**

The Panel understands the term "adverse impact on the environment" has been defined elsewhere as follows:

"Adverse impact on the environment" means

(i) impairment of the quality of (A) the air, land or water, (B) any of the layers of the atmosphere, (C) any organic and inorganic matter or living organisms, or (D) the functioning of the interacting natural systems that include the components referred to in (A) through (C);

(ii) injury or damage to property or to plant or animal life;

(iii) harm or material discomfort to any person;

(iv) a harmful effect on the health of any person;

(v) impairment of the safety of any person;

(vi) the rendering of any property or plant or animal life unfit for use by any person;

(vii) loss of enjoyment of normal use of property; or

(viii) interference with the normal conduct of business.

The Panel recommends

> **that only a significant "adverse impact on the environment" should trigger a regulatory response.**

There are other actions in the legislation which may be required due to an adverse impact on the environment. Section 111 prohibits the release of substances into a waterworks system but this prohibition is tied to either a harmful effect on human health or concentrations of substances in excess of those prescribed. As the purpose of the draft legislation is protection of the environment, there should also be a general prohibition against releasing into a waterworks system substances that will likely result in an adverse impact on the environment.

Similarly, the Section 139 prohibition on hazardous substances protects only human, plant and animal life. There should also be a general direction to persons handling hazardous substances and pesticides to do so in a way which prevents adverse impacts on the environment. Therefore, the Panel makes the following recommendations:

> **Section 111 Release of Substances Prohibited**
>
> **This section should be amended to include a prohibition against releasing or permitting the release of a substance into a waterworks system**
>
> **"(c) that causes or may cause an adverse impact on the environment."**
>
> **Section 113 Environmental Protection Order**
>
> **Subsection (1) should be amended to allow the granting of an environmental protection order where a waterworks system is being operated or maintained in a manner that "may cause an adverse impact on the environment."**
>
> **Section 139 Storing and Handling**
>
> **This section should be amended to provide that a person who keeps, stores or transports a hazardous substance or pesticide, etc. shall do so in a manner that**
>
> **"(b) prevents the substance or pesticide from coming directly or indirectly into contact with human, animal or plant life or the environment in any manner that may be injurious to that life or that may cause an adverse impact on the environment."**

Another key definition in the legislation is "activity".

The Panel recommends

> **that the term "activity" be defined in the legislation and not in regulations.**

The Panel recommends one of the following two alternative definitions:

> **1. any activity which has an adverse impact on the environment**
>
> **or**
>
> **2. lists of activities be included in the legislation.**

The Panel recognizes these lists may vary according to different sections of the legislation, as appropriate. There should be a provision to add to that list to allow for updating by regulation. Consideration could also be given to including powers for the Director to add activities by giving notification to all operators, as is found in current legislation.

The Panel believes that as wide a definition of "project" as is practical should be adopted in determining what is screened for possible environmental impact assessment and recommends the following:

> **The definition of a "project" should include changes to existing projects.**
>
> **Projects which involve an alteration of the environment should be reviewed to determine whether an environmental impact assessment should be done.**
>
> **That "alteration of the environment" be defined as: any disturbance of the components of the environment, including**
>
> > **the disturbance, exposure, covering or erosion of land;**
> >
> > **the contamination, degradation or deterioration of land;**
> >
> > **the cutting down or removing of vegetation;**
> >
> > **the diversion of water; and,**
> >
> > **the release of contaminants into the environment in an amount, concentration or level which has an adverse impact on the environment.**

The Panel heard many concerns about the use of the term "directly affected" and there were strong comments that the term not be defined in the narrowest sense. The Panel believes a more useful term would be "anyone with a legitimate concern," and the legitimacy of the concern would be determined by the tribunal or Government official to whom the person wishes to make representations.

The Panel also recognizes the specific concerns voiced regarding other definitions in the Act. In the final drafting, the following definitions should be reviewed carefully in light of the public's comments:

animal
contaminant
hazardous substance
hazardous waste
open body of water
owner
potable water
reclamation
watercourse
well

DISCRETIONARY POWERS

Overview of Public Comments

Too much discretionary power vested in the Minister, the Lieutenant Governor in Council (Cabinet) and the Department's officials was the most frequent criticism with respect to the proposed legislation. This very broad discretion may suggest that "Government simply wants the flexibility to appear stringent while remaining lax."

Comments

- The "sweeping discretionary powers" given to the Minister and the Lieutenant Governor in Council are, some presenters said, "the most disturbing aspect of the proposed legislation," particularly when there is no appeal beyond the Ministerial level.
  - the proposed Act gives the Minister "too many virtually unlimited powers but sets out no rights for anyone";
  - the discretionary powers may have potential negative impacts on business planning and economics;
  - the power of the Minister or Cabinet to exempt any person, company, or event from the legislation is "totally against the spirit of environmental protection."
- The Minister's potential lack of scientific environmental knowledge is alarming to some participants.
  - scientific knowledge would be crucial to decision-making in an environmental crisis;
  - "In effect the Act becomes window-dressing with the Minister defining 'adverse effects' and the Lieutenant Governor in Council designating which project will require EIA."
- Many presenters complained that the discussion draft has "far too many 'mays' and not enough 'shalls' leaving too many loopholes." To ensure that the "questionable pleasures of the Minister have no place in the Act," presenters suggested that most of the "mays" be replaced with "shalls".
- Submissions requested the following changes:
  - that the principle of Ministerial accountability be uppermost and that administrative discretion be limited; Minister and Director should be legally bound by the legislation;
  - that firm guidelines/objective criteria be specified as to the discretion and authority of the Minister or Director in his decision-making ability;
  - that the breadth of the powers should be reviewed in light of the objectives of the legislation;
  - that an appeal process be established.

DISCRETIONARY POWERS

Panel Comments and Recommendations

The level of discretion provided in the legislation is considered to be a key concern by the Panel as it was voiced by so many members of the public who made submissions. The Panel recognizes that some discretionary powers are necessary. The concern is generally where an abuse of discretion could result in the absence of appropriate action. In such cases, the impression is that the provisions of the legislation are meaningless. As a result of these concerns, the Panel makes the following general and more specific recommendations:

Some general guidelines should be used to assess whether a duty should be imposed. The Panel suggests discretion be removed where inaction would result in an adverse impact on the environment, or where release of information to the public is involved.

Criteria should be developed for provisions which establish decision-making authority in order to create accountability for those decisions. For example,

Section 13 Powers and Duties of the Minister should be amended as follows:

"(b) shall, as the representative of the Government, maintain a continuing liaison with the Government of Canada and agencies of that Government, the Governments of other provinces and agencies of those Governments, and municipal corporations in Alberta, in relation to matters under the administration of the Minister."

"(c) shall compile, study and assess information related to the environment for the purpose of carrying out his functions and responsibilities under this or any other Act, and shall provide that information to departments of the Government, government agencies and to the public;"

"(d) shall carry out and may participate in research projects related to matters pertaining to the environment;"

"(h) shall conduct economic analyses to determine the benefits and costs of proposed major alterations of the environment, resource use fees, pollution control levies, insurance against major pollution catastrophes, and methods of financing major resource development and pollution control projects;"

"(j) shall generally take any action he considers necessary to promote the protection of the environment."

ENVIRONMENTAL IMPACT ASSESSMENT

Overview of Public Comments

The goals and purposes of the Environmental Impact Assessment (EIA) process were discussed by many participants. Overall, people advocated the process be public, mandatory, comprehensive and credible. Submissions indicated that the best interests of the environment should be paramount in any decision made or action taken following an EIA.

However, many members of the public also felt a need for balance between this primary factor and other concerns such as economic, and social considerations.

At the centre of discussion of the proposed Act was public involvement in the EIA process and approvals. Of specific concern were two issues: public participation in developing Terms of Reference for EIA; and equal opportunity for public participation as opposed to limiting participation to those "directly affected."

Participants offered many comments on criteria for deciding which projects should require an EIA; on who should prepare an EIA; on EIA reporting; and on adjudication of the adequacy of an EIA.

Comments

- Many presenters felt the fundamental purpose of the EIA is to recommend approval of only those public policies and dispositions, and those projects that are environmentally sound.
- Submissions indicated an EIA process should be capable of delivering fair, equitable, and environmentally sensitive decisions.
- Some presenters said that one way to achieve environmental protection was to use a "no-go" option.
- Some presenters felt decisions should also incorporate a more ecological and holistic approach.
- Some members of the public suggested that environmental, economic and social considerations should all be integrated into the first possible stage of an EIA.
- Some submissions requested the name "Environmental Impact Assessment" be changed in favour of "Integrated Impact Assessment", allowing for all aspects of impact to be a part of the assessment.
- Members of the public suggested that no activities begin or approvals be issued until the EIA review process is complete.
- The majority of remarks which addressed public involvement stressed adequate public input throughout the EIA process with this input to be "taken seriously."
- Meaningful public input can be obtained only in such a way that is flexible and responsive to the type of project, its people and the surrounding environment.

- Some members of the public feel that an extensive consultation process has to begin in the early stages of the EIA process to reduce conflict later. Early stages of public consultation would involve community workshops, information dissemination, interaction and liaison between interested parties, government and the general public. The input should be included in Terms of Reference. "The public wants communication, participation and collaboration." They want to know "the whole range of mitigative measures, options, and to participate in evaluating and selecting development sites."

- The Terms of Reference should be flexible even after they are agreed to, some presenters said, and they should allow the EIA to evolve by using public input and new information. The publication of the Terms of Reference should be followed by a variety of mechanisms designed to facilitate public input. There should be a fixed time limit for input rather than a "reasonable time," and the Director's discretion must be limited.

- Strong feelings were expressed by some people regarding limiting public participation to those "directly affected".

  - some presenters asked for a definition of this term, or its deletion from the Act; in their opinion "directly affected" should give individuals "the right to intervene freely," hence, it should include "anyone with an interest" or "any person or group with a clearly ascertainable interest worthy to be presented";

  - in the opinion of some, "there is no reasonable justification for excluding all but those concerned in the narrowest sense from intervening or participating"; it was pointed out that "all Albertans are directly affected by anything within our boundaries, and should be allowed to comment or initiate court action regarding projects which damage our province"; some opposing views were expressed in single comments from industry; limiting the input to those who are "directly affected" would not make the public consultation process complete.

- Support was expressed for intervenor funding: If you give a role to the public, you have to give them tools: meaningful funding, technical expertise, legal help. "There needs to be a balance between funding for no one and funding for everyone. The aim is to provide funds for credible review and intervention."

- The majority of comments regarding criteria for deciding which projects require an EIA agreed that the legislation should include the requirement for publishing, for public review, a list of projects subject to an EIA.

- Some presentations suggested "all projects in both the private and the public sector, and especially those initiated by government departments and those which receive public funding, be subject to a mandatory EIA."

- "The Director could apply a test," some said, "to each proposed project to determine if it should be exempt from the EIA process."

- Some comments proposed that "the Director make his reasons for the decision public and make available a description of the information upon which this decision was based."

- "Criteria or principles that determine which projects undergo an EIA should be specified in the Act and not left solely to the discretion of the Director."

- If the Director were to maintain the discretion as to whether or not a project required an EIA, then "there should be an appeal available to the Director's decision."

- Many presenters felt that for an EIA to be credible, it not be prepared by the proponent: "How will the Act ensure that the proponent of the development project provided the public with both positive and negative information rather than material designed to sell the projects?"

- Submissions suggested ways in which EIAs could be prepared:

  - "EIAs be conducted by independent consultants approved or licensed by the Alberta Government";

  - "proponent supplies funds to consultants or agencies selected by the Review Board to prepare the EIA";

  - "EIAs be done by the Government to eliminate conflict of interest and that costs be recovered from the proponent";

  - "EIA be done by proponent, reviewed by the Department and then full public hearings by a Panel of technical experts."

- Suggestions were made that there be a description of the need for the project and that the EIA take into account the requisite infrastructure such as transportation, forestry management agreements, health and agricultural impacts, etc.

- Siting justification and analysis of alternative locations in the EIA report were felt to be important considerations: It was suggested that there be multistakeholder discussions and guidelines that clarify how much engineering and environmental detail be required in discussing alternatives to the proposal. With respect to the proposed site, many felt that identification of existing environmental conditions was a key component of the EIA report.

- It was suggested by some that in order to fully understand the impact of a proposed project, its impacts be combined with those of existing and proposed projects to form a cumulative assessment, giving the public a better understanding of the cumulative impacts.

- If a project were approved, some felt it would be important that ongoing monitoring occur in order to assess the accuracy and prediction of the EIA. By so doing, the cost/benefit could be evaluated and adjusted. The agency which carries out the monitoring should be independent of government or industry, submissions suggested.

- Many members of the public were unclear as to the role of the Natural Resources Conservation Board (NRCB) and how it fits into this legislation.

- Many participants shared the view that "a properly constituted NRCB, which would be an independent body with a mandate to protect the environment, should be an integral part of the EIA review and approval process and be part of the Act." Some maintained that the "NRCB have within its authority the opportunity to conduct an EIA and review of existing projects."

- Some submissions from industry supported "formal public hearings under the jurisdiction of the NRCB."

- In order that the NRCB be seen as a non-political decision-maker, it was recommended that "all discretionary power not rest with the Minister but that the NRCB should itself be empowered to review any project."

- It was made clear from many comments that the "mandate of both the Energy Resources Conservation Board (ERCB) and the NRCB be to reject development proposals on environmental grounds, if warranted." There was concern that without a clear mandate the "NRCB, like the ERCB, will become captive to the industry it is supposed to regulate."

Panel Comments and Recommendations

The Panel believes that the Environmental Impact Assessment (EIA) process should be a practical one that engenders public trust and confidence that the environmental impacts of a proposed project are being impartially addressed.

The Panel believes that the EIA process addresses the need to evaluate the impacts of projects and activities on the environment. However, the Panel notes the need for means to evaluate the impacts on the environment of government policies and programs and the dispositions of Crown lands; therefore, the Panel recommends the following:

> **The Government develop the means to evaluate the impacts on the environment of government policies, programs and dispositions of Crown lands for such purposes as oil and gas and coal exploration and timber harvesting.**

Section 44 of the proposed Act sets out a number of purposes of the environmental impact assessment process. Some of those who made submissions to the Panel considered the purposes set out in the proposed Act to be somewhat ambiguous and potentially contradictory.

The Panel supports the inclusion of a section on the purposes of the environmental impact assessment process and recommends that the following be substituted in Section 44 as the goals and purposes of the EIA process:

> **The purpose of the environmental impact assessment process is**
>
> **to provide the basis on which to determine whether or not a proposed project will maintain the overall integrity of the environment;**
>
> **to identify and evaluate the impacts on the environment and the social, health, cultural, and economic impacts of a project or activity;**
>
> **to provide for the meaningful involvement of the public in the environmental impact assessment process;**
>
> **to ensure that proposed projects or activities which are predicted to have a significant net adverse impact on the environment are not approved.**

The Panel makes the following recommendation:

> **No part of a project or activity that is subject to the EIA process should be started, and no alteration made to the environment, before the decision regarding the project is made. (It is recognized that some surveying, reconnaissance and investigation work may be required in order to prepare a proper EIA report.)**

In recommending a broad definition of projects or activities which would receive screening for environmental impact assessment, the Panel was not unmindful of the existing broad definition in Section 8 of the Land Surface Conservation and Reclamation Act which currently provides for the ordering of environmental impact assessments. Under Section 8 "any operation or activity which, in the opinion of the Minister, will result or is likely to result in surface disturbance" is liable to undergo an environmental impact assessment if the

Minister so orders. "Surface disturbance" was defined in the Land Surface Conservation and Reclamation Act as the disturbance, exposure, covering or erosion of the surface of land or the contamination, degradation or deterioration thereof. The Panel has simply recommended substitution of "alteration of the environment" for "surface disturbance".

As far as the definition of "projects or activities which must be subject to scrutiny" is concerned, the Panel is of the view that if the Minister is not prepared to adopt a broad generalized definition, then he ought to include in the legislation (not the regulations) as comprehensive a list as is possible. Such a list could be extracted from the activities which are presently governed by the Agricultural Chemicals Act, the Clean Air Act, the Clean Water Act, the Water Resources Act, the Ground Water Development Act, the Hazardous Chemicals Act, the Land Surface Conservation and Reclamation Act, the Wilderness Areas Ecological Reserves and Natural Areas Act, and the Historical Resources Act. (See Appendix B for a list of projects or activities.) There should be a provision to add to that list to allow for updating by regulation.

The Panel believes that the decision whether or not a project requires an environmental impact assessment report is critical. The Panel supports cooperation and consultation within Alberta Environment and with other agencies, particularly the Natural Resources Conservation Board, to ensure that an initial level of screening of projects at the administrative level is accomplished. The Panel supports the screening process and the preparation and publication of the screening report in the legislation and also recommends the following:

> That existing local processes be utilized wherever possible to accomplish this screening,including municipal processes such as zoning, subdivision and development permit approvals.
>
> Such screening must be done by persons qualified to recognize projects or activities which would result in other than an insignificant adverse impact on the environment.

When should an EIA be ordered?

The Panel believes that any project or activity which, by itself or in conjunction with other existing or proposed projects or activities, would result in other than an insignificant adverse impact on the environment, would require an environmental impact assessment. (The definition of "adverse impact on the environment" is included in the Definitions section of this report.)

The matter of determining the extent of an adverse impact on the environment was considered by the Panel who made the following recommendations:

> The determination of whether the project would result in other than an insignificant adverse impact on the environment should be made by the qualified person or body conducting the screening. This discretion must be exercised on the basis of legislated criteria.
>
> These legislated criteria include irreversibility of impacts, the magnitude of the project or activity (spatial and temporal), cumulative impacts, the degree of public concern and environmental sensitivity.

The Panel also considered the matter of appeals and time limits for such appeals and recommends the following:

That a decision to require or not to require the preparation of an EIA report should be subject to an appeal, i.e., an appeal process be added to the proposed legislation.

That the time allowed for this appeal should be flexible, providing sufficient time in relation to the significance of the proposed project or activity.

That notice of the decision to require or not to require the preparation of an environmental impact assessment and the reasons for this decision should be published and the proponent or interested parties should have a limited time in which to appeal.

That the appeal should be to the Natural Resources Conservation Board which would hear representations from the proponent and/or interested parties.

What should an EIA contain?

The Panel recommends the following be included in an EIA report:

1. **A description of the proposed project or activity, and all the requisite infrastructure, and analysis of the need for the project;**

2. **Justification for the proposed location including a consideration of alternative locations;**

3. **An identification of the existing condition of the environment at the location of the project or activity and any other location likely to be adversely impacted by the project;**

4(a). An assessment of the impact of the project or activity, itself or in conjunction with other existing or proposed projects and/or activities, on the environment, including effects of malfunctions or accidents, from cumulative, regional, temporal and spatial perspectives;

4(b). An assessment of the proposed project or activity from the social, economic, cultural, and health impacts from cumulative, regional, temporal and spatial perspectives;

4(c). An assessment of the interrelationship between (a) and (b);

5. **The steps that have been or will be developed to mitigate the potential negative impacts as identified under 4;**

6. **The identification of potential impacts as identified under 4 which are not fully mitigated;**

7. **Steps that will be taken to monitor predicted adverse impacts of a project or activity on the environment and to monitor efforts to mitigate potential adverse impacts of a project or activity on the environment;**

8. **Steps that will be taken to monitor predicted social, health, economic and cultural impacts of a project or activity and to monitor efforts to mitigate potential adverse social, economic, health and cultural impacts of a project or activity;**

9. A consideration of the alternatives to the project or activity including the alternative of not proceeding with the proposed project or activity, and the impacts of those alternatives as set out in 4;

10. The contingency plan that has been or will be developed in order to respond to the unpredicted adverse impacts (if there is not a complete plan, any subsequent approval must be subject to completion of a complete monitoring and contingency plan);

11. An analysis of the short and long term capacity of the environment to recover from adverse impacts which are likely to result from a project or activity;

12. Ways in which wastes produced by the project or activity would be minimized or treated;

13. Major areas of concern expressed by the public; and,

14. Anything else the Director thinks should be included.

Terms of reference and who should prepare the EIA

The Panel supports Section 50 which states that terms of reference for environmental impact assessments must be developed by a proponent in consultation with the public.

Ordinarily, the EIA would be prepared by the proponent, although in circumstances where it would be unfair to require the proponent to prepare and/or bear the cost of the EIA, some other person or body may be required to prepare the EIA. The Panel recommends the following:

> In circumstances where legitimacy and public acceptability of the EIA might be in doubt if prepared by the proponent, the Department or the NRCB could order the EIA prepared or reviewed by another party.

Who should adjudicate upon the adequacy of an EIA? i.e. Who should determine whether a project is approved or not?

> The Panel recommends that the Natural Resources Conservation Board be the final arbiter of whether or not a project, be it an energy project or a non-energy project, receives an approval to proceed beyond the environmental impact assessment stage. Such decision could only be made following a hearing if either the proponent or the public wishes to make representations with respect to whether or not an approval should be forthcoming.

The Natural Resources Conservation Board Act would have to be amended so that any project for which an environmental impact assessment was ordered would require an approval pursuant to Section 5 of the Natural Resources Conservation Board Act.

Section 53 of the proposed Alberta Environmental Protection Act would also have to be redrafted to implement this recommendation such that once an environmental impact assessment is complete the proponent would be referred to the NRCB (assuming always that the EIA didn't clearly disclose that the project ought not to proceed because the potential negative impacts were unacceptable).

In the Panel's opinion, the Energy Resources Conservation Board (ERCB), as it is presently constituted, is not an appropriate tribunal to determine whether or not an energy project is permitted to proceed beyond the EIA stage.

Many of those making submissions to the Panel have praised the ERCB's process. That is, they have acclaimed the fairness of the process by which decisions on energy projects are made. But many of those same submitters and others have pointed to the Board's record on environmental issues.

The Panel is aware that the ERCB has a statutory mandate to "ensure environmental conservation in the exploration for, processing, development and transportation of energy resources and energy"; but the ERCB is also charged with effecting the conservation of the energy resources of Alberta and with providing for the economic, orderly and efficient development of the province's oil and gas, oil sands, coal and hydro resources. It is also statutorily bound to afford each owner the opportunity of obtaining his share of the production of oil and gas from any pool. The Panel believes that the ERCB inevitably must give priority to energy development, given its legislated mandates. Therefore, in order to ensure equality of treatment for both energy and non-energy projects requiring environmental impact assessments, the Panel recommends the following:

> That all projects requiring EIAs be required to obtain Natural Resources Conservation Board approval pursuant to Section 5 of the NRCB Act.
>
> Alternatively, the Panel would recommend significant changes to the Energy Resources Conservation Act, the Oil and Gas Environment Act, the Oil Sands Conservation Act, the Coal Conservation Act, the Hydro and Electric Energy Act and the Pipeline Act to ensure that energy projects requiring EIAs must obtain an environmental approval analogous to the environmental approval which non-energy projects must obtain under Section 5 of the Natural Resources Conservation Board Act.

In making this recommendation, the Panel is not unsympathetic to the submissions of those who warned against a proliferation of potential hearing processes. The Panel notes that there are provisions in the NRCB Act which permit cooperative reviews (with other Boards (Section 20)). The ERCB Act may require a similar provision.

Another means of avoiding duplication of proceedings is contained in Section 9 of the Expropriation Act. Under the Expropriation Act, the owner of land intended to be expropriated is entitled to a hearing into whether the proposed expropriation is fair, sound and reasonably necessary. Back in the days when pipelines, powerlines and power plants were all facilities for which land could be expropriated, the Legislature was concerned that a landowner could get a hearing by the ERCB of his concern about a project; and once the project was approved by the ERCB, he could later insist on a further inquiry into whether or not the expropriation was fair, sound and reasonably necessary. Hence, Section 9(1) which stated

> "When, in the opinion of the approving authority, the owner has, pursuant to any other Act, had substantially the same opportunity to object to the appropriation as he would have had on an inquiry under this Act, the approving authority by direction in writing may dispense with an inquiry."

In The Calgary Power Ltd. and Henkel (1976) 10 L.C.R. 136 (Alta. S.C. Appell. Div.) the Surface Rights Board denied Calgary Power's application for a direction in writing dispensing with an inquiry under the Expropriation Act on the grounds that Mrs. Henkel had, pursuant to the provisions of the Hydro and Electric Energy Act, substantially the same opportunity to object to a proposed powerline as she would have had on an inquiry under the Expropriation Act. The Appellant Division gave effect to the legislation and held that the second hearing before the Surface Rights Board ought to have been dispensed with.

Likewise, where an interested party's concerns were heard and adjudicated upon by the NRCB, the ERCB should be empowered to dispense with the hearing it would otherwise be required to hold pursuant to Section 29 of the Energy Resources Conservation Act.

Standing

Many submitters criticized the Alberta Environmental Protection Act for limiting opportunities to participate to the proponent and "persons directly affected". Similar concerns were expressed to the EIA Task Force. A number of submitters pointed out that in uninhabited areas of the province, environmental concerns could go unrepresented if the test were one of "directly affected". (See Definitions section.)

Quite apart from the issue of intervenor funding, the Panel recommends the following:

> That anyone with a legitimate concern (not necessarily a legal interest) should have the right to participate in the process.
>
> That the determination of what constitutes a legitimate concern should be determined by the person or body responsible for screening and by the Natural Resources Conservation Board.

APPROVALS

Overview of Public Comments

Approvals were of interest and concern to many presenters. Comments dealt with applications for approval, issuance,public notice, Certificates of Variance, and other areas.

Comments

- Section 57(1) Application for approval
  - subsection (c): clarification of the phrase "justification for any release" was requested. "Does this imply that applications must technically and/or economically justify all emissions relative to a theoretical zero emission option?"
  - subsection (e): some presenters pointed out that this subsection "if strengthened substantially" could help "move the province towards practical waste reduction measures with a minimum of specific regulations." Therefore, they urged that subsection (e) be changed to read: "information that shows that the applicant has considered and planned to implement (not just "considered") the best practical (not just the "reasonable") measures for minimizing waste production and for recycling waste materials, and that all other appropriate measures be implemented limit the amount of waste requiring disposal."
- Section 58(1) Issue of approval: Discretionary power of the Director was the main focus of discussion under this section. Participants made the following points:
  - the Director should issue an approval "only if the project meets all applicable standards and regulations, and it can be demonstrated that it will have no significant adverse environmental impact";
  - if an application has complied with all requirements, the "approval should be issued without further conditions";
  - once the limits are set by regulations, the requirements should be the same for everyone, and not "more stringent" (Section 58(3));
- A number of comments pointed to the need for setting a time limit for the Director's decision on issuing a permit. A 30 day time limit was suggested. Some requested maximum time limits for each step in the approval process.
- Presenters were concerned that under Section 61(3), publication of Notice of Application can be exempted by the regulations, or waived by the Director.
- "All of the applications (subject to confidential or proprietary concerns) should be made available to any party who wishes to review the application, in order that they may express their concern on this to the Director, in a fair and comprehensive manner." It was stated that "there should not be exemption, because in the cases of exemption, the public would not be aware of an application until after the Director's decision." Presenters also added that "if activity...has the potential to produce adverse environmental effects, and therefore requires an approval, then it also requires public notification."

- Those who did not oppose Section 61(3) entirely, requested that the conditions for determining when the notice requirements can be waived, should be explicitly stated, and not based on the Director's opinion.

- The Certificate of Variance, was called "a licence to pollute" or "an appalling loophole," which "if left in, needs a review process."

- The provision for a Certificate of Variance should require an operator to develop a plan as to how he would achieve regulatory compliance. In so doing, "this measure would incorporate criteria for the granting of a Certificate, and thereby, increase the comfort level of those concerned about such applications, and enhance regulatory certainty for applicants."

APPROVALS

Panel Comments and Recommendations

The activities for which approvals were required under the nine statues which AEPA is intended to replace are as follows:

- **pesticide applicator's licences under the Agricultural Chemicals Act;**
- **bottle depot approvals under the Beverage Container Act;**
- **permits to construct and licenses to operate certain facilities listed in Section 3(1) of the Clean Air Act;**
- **permits to construct and licenses to operate certain water facilities listed in Section 3(1) of the Clean Water Act;**
- **water well licences under the Ground Water Development Act; and**
- **development and reclamation approvals under the Land Surface Conservation and Reclamation Act.**

Under the nine statutes which AEPA is designed to replace, a proponent, at least, knows what activities require approval; under AEPA he does not. The Panel recommends the following:

> **That the legislation, not the regulations, set forth the activities (as previously discussed under Definitions) for which an approval under Sections 55, 58, 59, 60 and 62 (3) is required.**

Submitters have indicated there are no provisions in Section 55, 58 or 62 (3) setting forth the circumstances in which the Director may issue an approval or the circumstances in which an approval may be denied other than failure to conduct an EIA, if an EIA is required, or failure to comply with NRCB or ERCB requirements (Section 56).

The Panel concurs that there should be some guidance provided. The Panel recognizes that the criteria could vary depending upon whether a development and reclamation approval or a Clean Air Act or Clean Water Act approval was being sought. A generalized criterion which the Panel considers appropriate might be that no approval, pursuant to Section 58 of AEPA ought to be issued if the activity for which the approval was sought resulted, in the opinion of the Director, in a significant adverse impact on the environment.

Section 57 of the Act sets forth the things which an application for an approval under the new legislation must have. Some of the prescribed contents, which are mandatory, do not apply to all applications for approvals under this Act.

A number of presenters drew the Panel's attention to the fact that there is no time limit set forth in Section 58 within which the Director must make his decision on an application for a Section 55 approval. Yet there are statutorily prescribed time periods within which a person who is "directly affected" by an application must submit a statement of concern following publication of notice of an application (30 days – Section 62(2)), and within which a notice of objection to a decision on an approval must be submitted to the Minister following a publication or the giving of notice of a decision by the Director (30 days – Section 16(2)), and

within which a Board of Review must report to the Minister on a notice of objection referred to it (less than 60 days – Section 21). Therefore, the Panel recommends the following:

> That the Director be required to render his decision expeditiously, having regard for the nature of the approval which is sought.
>
> That the other time limits be removed; appropriate time limits for filing statements of concern and notices of objection will necessarily vary with circumstances and can be set by the Director and/or Minister in each case.

The ability of a legitimately concerned person to submit a statement of concern with respect to an application for approval or an application to amend an existing approval is dependent upon publication of notice of the application under Section 61 (1) or 61 (2). And, although Section 61 (1) imposes upon the Director a duty to publish notice of applications he receives, Section 61 (3) provides that the regulations may exempt certain applications from publication. It also empowers the Director to waive the notice requirements in an emergency, where the application relates to something which will only have a minor impact on the environment and where adequate notice has already been given. The Panel does not favour exemption by regulation of certain applications for approval.

Closely connected with approvals are the Boards of Review provided for in Sections 16 to 24, inclusive, of AEPA. Section 16, dealing with notices of objection and Section 63, providing for publication of notice of the Director's decision on approval (which starts the 30-day period running for filing a notice of objection) are unnecessarily complicated and the Panel recommends as follows:

> That sections regarding public notice and Boards of Review be redrafted.

Certificates of Variance were a concern of a number of presenters. Some questioned the need for them at all. The Panel is aware that quite a number of these are issued by Alberta Environment each year.

Section 68 (1) of AEPA sets forth the circumstances in which a Certificate of Variance might be issued. These circumstances are the same as those set forth in Sections 11 (1) of the Clean Air Act and Section 12 (1) of the Clean Water Act. Depending upon how "adverse effect" is defined, one would have thought the circumstances set forth in Section 68 (1) of AEPA were sufficiently restrictive; but based on the number of Certificates of Variance which have been issued under the Clean Air Act and the Clean Water Act, where they can only be properly issued where the variation is not likely to result in air or water pollution of such a degree which could be detrimental to life or health or adversely affect property, the Panel is of the view that further restrictions should be imposed.

Perhaps if applications for Certificates of Variance had to be published and statements of concern could be submitted in connection therewith, and notices of objection submitted in connection with their issuance, the numbers of Certificates of Variance would drop. Therefore, the Panel recommends as follows:

> That the issuance of Certificates of Variance be limited to certain defined sets of circumstances which are much more restrictive than those which currently exist.

It was also recommended to the Panel that the information upon which the Minister's decision to issue such variances each year be released. The Panel urges that this recommendation be pursued.

The Panel recognizes the potential for the creation of two bureaucracies with Boards of Review and the NRCB. The Panel questions the rationale for separate Boards of Review given the extensive jurisdiction of the NRCB, therefore the Panel recommends as follows:

> **That the need for separate Boards of Review be examined in light of the jurisdiction of the NRCB.**

CONTAMINANT RELEASE

Overview of Public Comments

Many critical comments were directed toward Section 76: Release of Contaminants Prohibited. In the public understanding of this Section, the release of contaminants, which are not regulated by approvals or regulations, is not prohibited.

Participants felt that a better approach than the one taken in the proposed Act would be to provide for a general prohibition against the release of any contaminant, "even if it is not covered by an approval or the regulations." In this case, the terms "contaminant" and "adverse effect" should be defined broadly.

Some advised to "consider a general prohibition against the release of any contaminant which may impair the quality of the environment; cause injury to any form of life or damage to any property; adversely affect the health, or impair the safety of any person; render any property or plant or animal life unfit for use by man."

Some suggested that the approach taken in the Ontario Environmental Protection Act should be followed in Alberta. In Ontario "adverse effect" is a defined term in the Act and not in the regulations, and there is a general prohibition against the discharge or release of any contaminant.

Some of the participants emphasized that the role of Alberta Environment should be working toward the goal of contaminant elimination.

Comments

- The legislation allow for a specific "one time" release as it is practised under the Clean Water Act.
- The legislation contain provisions for a remedy, or remedies, for dealing with off-site contamination.
- The legislation address different emission levels during various phases of industry operations.
- Chemical trespass regulations be written such that they allow easy determination of the source of contamination.

CONTAMINANT RELEASE

Panel Comments and Recommendations

The Panel recommends the following:

That Section 76 be amended to prohibit the release of a contaminant into the environment except where authorized by an approval or by the regulations.

However, the Panel recognized the difficulty posed by the broad definitions of "contaminant" and "adverse impact on the environment" and suggests that Section 76 be reviewed to determine the practicality of the Panel's proposed amendment.

CONSERVATION AND RECLAMATION

Overview of Public Comments

The proposed Alberta Environmental Protection and Enhancement Act's provisions dealing with conservation and reclamation were discussed in some detail by a number of presenters. Specifically of interest were those sections dealing with the 25 year liability, the security fund for conservation and reclamation, reclamation certificates, and the definition of "specified land".

Comments

- Many presenters were of the opinion that the "25 year liability is excessive." It was suggested that "at the time a Reclamation Certificate is issued, a determination be made as to whether or not the operation 'used the best methods' and if not, then the certificate should not be issued."
- Perception of what is correct and what is not correct may change within 25 years, especially with technological advancements.
- Those who were in favour of the 25 year liability suggested that sub-clauses Section 89(2)(a) and (b) be removed since "it gives any operator an easy out if he can prove either of these sub-clauses." It was also mentioned that the "type of equipment used is irrelevant as long as the job is accomplished as per the Development and Reclamation Approval."
- Those presenters who felt the 25 years was not long enough requested that "the proponent of a project accept full responsibility for any environmental damage." Some went as far as asking for "100 years" since "nature takes much longer than 25 years to regenerate."
- Currently, a certificate can be issued if the "inspector is satisfied"; presenters suggested that this "gave too broad a discretion to the inspector." It was suggested the owner of the land "have input into the issuance of the Reclamation Certificate."
- It was suggested that in some circumstances "the Reclamation Certificate could be issued only after a number of years of successful revegetation."
- The issuance of a certificate as it now stands was suspect to some submitters since "issuance of a certificate seems to advocate the evaporation of well laid out reclamation plans." It was suggested that no certificate be issued "until the land is brought into full production."
- People suggested that "Interim Reclamation Certificates be eliminated altogether"; this type of certificate was seen as "unfair to landowners because the surface lease is only partially complete." Some submitters felt that issuance would assist companies in "their annual reporting requirements and would provide temporary documentation until the disposition of land is finalized."
- The issuance of a Reclamation Certificate should signify regulatory approval of an operator's reclamation efforts."

- Many participants felt that "appropriate deposits would encourage reclamation" but that the deposits should be "compulsory and enough to cover the potential cost of reclamation."
- The public requested "there be no provisions that would exempt government from the Security Fund."
- Presenters suggested the Security Fund be established with clear criteria: "when security will be required"; "the form of security"; and "the amount of security required."
- A number of participants felt that retail establishments should not be exempted from the definition of specified land since "retail uses serving the general public, such as gas stations and dry cleaning establishments, may require reclamation especially if there was ground contamination."
- It was suggested that the "exclusion of retail outlets be removed, given the spirit of the legislation which is to hold everyone responsible for ensuring the protection, improvement and wise use of our environment."
- In Section 100 (h) the term "decommissioning" is used without a definition.
- In order for the Management of Underground Storage Tanks (M.U.S.T.) program to be effective, specified land should include gas stations so land can be reclaimed when there is removal of a leaking underground storage tank.

CONSERVATION AND RECLAMATION

Panel Comments and Recommendations

The Alberta Land Surface Conservation and Reclamation Act (LSCRA) is unique in Canada in that it is the only piece of Canadian legislation which provides a comprehensive scheme for reclaiming disturbed lands. Because of the Act's importance, the Panel would like to see its positive features included in the new legislation.

Section 55 states that no person shall commence, continue or permanently cease an activity designated by the Act or the regulations as requiring an approval unless he holds such an approval. The Act does not expressly designate any surface disturbance operations as requiring an approval. The regulations may designate at least the existing regulated surface operations (coal, oil sands, pipelines and gravel pits) as activities requiring an approval analogous to development and reclamation approvals. Many of those who made submissions commented on the lack of specificity in the proposed legislation. The Panel makes the following recommendation:

> **That the activities listed in Section 23(1) of**
>
> **Land Surface Conservation and Reclamation Act (LSCRA) ought to be designated by AEPA as requiring an approval analogous to the old development and reclamation approvals under LSCRA.**

The Panel also recommends as follows:

> **That the Minister consider designating timber harvesting operations, power plants, dams and irrigation projects as "activities" under this legislation.**

It is not clear to what lands the conservation and reclamation provisions of the proposed Alberta Environmental Protection Act apply. The provisions apply only to "specified land" which is land on which an "activity" (to be defined by the regulations) is carried out, or land which is designated in the regulations as specified land (Section 81(g)). This section states that specified land cannot include land used solely in connection with a retail establishment which serves the general public. The Panel believes that the retail exemption is too broad. For example, the proposed exemption would appear to exclude service station sites which have underground storage tanks (USTs). However, UST sites require surface and subsurface reclamation of sites (including retail sites) which have been contaminated as a result of the underground storage of petroleum products. The Panel recommends the following:

> **That the retail exemption be re-examined.**

As far as the residential exemption is concerned, the Panel recommends the following:

> **The exemption under the LSCRA be continued for activities conducted by the owner of a single residence on his residential lands but not for developers of multi-lot residential subdivisions.**

In LSCRA restricted area orders specify areas in which exploration operations may be prohibited or curtailed. These do not appear to have been provided for in the AEPA. Section 16 of the Department of the Environment Act providing for "restricted development areas" and "water conservation areas" bestows similar powers. The Panel recommends the following:

> If AEPA is to be comprehensive environmental legislation, then the restricted development areas provisions of the Department of the Environment Act should be transferred to AEPA, subject to a review of the equity of the process by which these restricted areas are established.

In the matters of right of entry and the powers of investigators, the Panel recommends that the following be conferred in the legislation:

a) The power to enter and inspect and reclaim, and

b) the power to enter and reclaim for third parties to whom reclamation orders have been directed.

The Panel also recommends

> that those reviewing the constitutional validity of Sections 165 to 183 be made aware that different principles will apply to such powers when they are exercised by development and reclamation officers who will require rights of entry in order to accomplish reclamation.

Under Section 184 of the Act, the Minister may issue an enforcement order to any person who, in the Minister's opinion has contravened the Act or the regulations or who has contravened a term or condition of an approval. In addition to stopping or shutting down the contravening operation or activity, an enforcement order can also direct cancellation of the approval. The enforcement order, unlike the surface disturbance control order, must contain the reasons for making it. This is an improvement in the legislation which the Panel endorses.

The Panel has been advised that the actual security fixed by the Minister in the case of the regulated surface operations bears no resemblance to the actual costs of reclamation. The Panel questions the wisdom of this practice. The Panel agrees with the suggestion that the amount of such security be sufficient to cover the anticipated costs of reclamation and recommends as follows:

> That security deposits more closely approximate the anticipated costs of reclamation.

The Panel understands that the only time the Minister does insist on a security deposit is when the proponent is proposing to conduct a regulated surface operation (namely, coal, oil sands, gravel pits and the bigger, lengthier pipelines); therefore, the Panel recommends as follows:

> That the list of activities which require security deposits be expanded considerably.

Other apparent deficiencies in the proposed legislation include that it does not address the problem of reclaiming "orphan" wells and other "orphan" sites; nor does it address the problem of corporate insolvencies and receiverships. Simply defining "operator" as including successors, assigns, executors, administrators or agents of a person who uses

specified land for a regulated activity does not adequately address the problem and the Panel recommends the following:

> That Section 81(c) of the AEPA be reviewed to determine the adequacy of the definition of "operator".

The Panel sees no need for the reference to "additional financial security" in Section 82 (1) so long as the regulations provide for the giving of additional security from time to time and for the periodic review of the adequacy of the security given.

The Panel understands that reclamation officers for Crown lands are not those who work for Alberta Environment but are rather employees of Alberta Forestry, Lands and Wildlife. The potential for conflict and/or inconsistent administration is apparent. The Panel is not sufficiently knowledgeable to make a recommendation with respect to those sections of AEPA dealing with delegation, transfer of administration and agreements with other Governments and municipalities, except to say that there are potential dangers inherent in such delegations.

It is not clear in the Act who would bear the cost of further reclamation work in a situation where a landowner successfully appealed the issuance of a reclamation certificate to a Board of Review pursuant to 16(1)(f). But clearly if the Minister were faced with a Board of Review recommendation, the cost of which was to be borne by the Government (as, for example, in the case of an orphan site), the Minister would be compromised by conflicting mandates. And if the Crown were the operator or a financial partner of the operator whose reclamation certificate was being appealed, would the Board of Review process be perceived as being fair? The Panel recommends the following:

> That the right to appeal a reclamation certificate to the Court be preserved.
>
> Preserving the one-year limitation period for launching an appeal of a reclamation certificate.

The "Chairman's Certificate" provisions of the LSCRA (Section 55) have been carried forward in the so-called "interim reclamation certificate" provisions of AEPA (Section 86); although, instead of the Chairman issuing the interim reclamation certificate, the Director is the one now so empowered. In the new legislation the interim reclamation certificate expressly authorizes the cancellation of the surface lease or right of entry order. This may not be wise. The Panel understands that the liability to continue paying annual compensation under surface leases and right of entry orders represents one of the most important incentives impelling companies to reclaim as quickly as possible; therefore, the Panel recommends as follows:

> Deletion of Section 86 because it would remove the incentive to expeditious reclamation.

Where some, but not all, of the land is reclaimed, it would be useful to both industry and landowners to be able to insist upon reclamation certificates for those portions which have been properly reclaimed; therefore, the Panel recommends the following:

> The new legislation include the provision for partial reclamation certificates.

Interpretation of Section 89(2) proved to be problematic for a number of lawyers and laymen.

Having heard submissions on both sides of the question, the Panel believes that there must be an ability to review a Reclamation Certificate which has been issued in addition to that which is contained in Section 87 of cancelling certificates issued in error or correcting clerical errors; therefore, the Panel recommends the following:

> **That Section 89 be reviewed to address these concerns.**

Concerns about the condition of reclaimed land were expressed and the Panel recommends the following:

> **That the legislation or regulations prescribe standards or criteria to be used by the Reclamation Council to determine whether any land is conditioned, maintained, or reclaimed, in a satisfactory manner.**

WASTE MINIMIZATION AND RECYCLING

Overview of Public Comments

Albertans are looking for leadership in the area of waste minimization and recycling. According to several presenters, the government can and should provide this leadership by aggressively promoting the concepts of reduce, reuse, and recycle. Waste reduction and recycling should be reflected in a policy which requires all government offices and government-funded institutions to use recycled products as much as possible.

Comments

- Government leadership could entail implementing regulations on packaging and on the recycled content of products manufactured or imported into Alberta, and the requirement that labels state a product's recycled content. It might mean surcharges on materials or products to encourage recycling and proper disposal or treatment. Other suggestions include banning of recyclables from landfills, making recycling mandatory, and taxing non-recyclable materials. A waste audit program was suggested to help businesses cut down on waste generation. Such a program might be combined with exemption from waste disposal taxes if the recommendations of the audit were implemented.

- Beverage Container Collection System: The public expressed frustration with the inability of bottle depots to accept some containers and with the fact that some containers cannot be returned to the point of purchase. Depot operators also described the current legislation as inadequate: specifically, they have concerns about the inflexibility of the current handling system with its centralized accounting system which requires a lot of sorting; the shipment of aluminum cans singly rather than in bales; and the prohibition of sales of empties to local customers. As well, pick-up of empties from the depots is not frequent enough and handling charges are too low for the amount of work involved.

- Section 1(ll) "recyclable" material: This definition was restricted to hazardous substances or pesticides: instead it should include all types of materials covered by Part 7.

WASTE MINIMIZATION AND RECYCLING

Panel Comments and Recommendations

The Panel agrees with the incorporation of the principles of waste minimization, reuse and recycling in the legislation. Waste minimization should be the first priority, followed by reuse, then recycling. The long term objective should be recycling for everything that can be recycled and a phasing out of products that cannot be recycled where there are alternatives. The cost of recycling should be borne by the user of the product.

In response to the public's comments, the Panel makes the following recommendations:

The Government should encourage initiatives for waste minimization, recycling and reuse through education and the use of economic instruments.

Individuals and communities are willing and want to take individual action but they feel hampered by the lack of a provincial infrastructure. The Government should provide support for individuals' initiatives and the necessary infrastructure. The Government should demonstrate leadership by providing directions or resolution of concerns and by setting an example through its own purchasing powers and actions.

The Panel supports the provisions which allow for collection of surcharges. These should be expanded, however, to allow funds collected from the surcharges to be used both for recycling and for appropriate waste disposal.

The Panel supports the requirements set out in Section 57(1)(e) to include information on waste minimization in applications for approvals.

To address concerns regarding the definition of "recyclable materials", the replacement phrase "recyclable hazardous substance or pesticide" is suggested.

Section 120 Prohibition against consignment of recyclable materials should be moved from Part 7 to Part 9: Hazardous Substances and Pesticides.

Concerns regarding packaging should be addressed through the regulations as provided for under Section 123(p).

Public concern about current provisions of the Beverage Container Act should be considered in the preparation of the regulations which will accompany the Alberta Environmental Protection Act.

Section 123 (v) should be amended by excluding the words "other than grants."

PESTICIDES

Overview of Public Comments

The public endorsed more research and education in the areas of pesticide use and alternatives. They expressed concern that responsibility for management of pesticide containers, public notice of pesticide use, safe storage and transportation, in fact all use and handling of fertilizers and pesticides be controlled by legislation.

Comments

- Encouraging alternatives to pesticides:
  - many submitters commented on Section 149 'Information on Alternatives'; all comments supported this section although each saw somewhat different information requirements;
  - several presenters recognized that although pesticides and chemical fertilizers are essential to most farm operations, more research on pesticides and alternatives is needed, and that farmers need more information related to pesticide use and application;
  - there is a need to work together to identify acceptable application techniques and to develop educational programs to inform the public and the applicator about these techniques;
  - some presenters saw these information provisions coupled with a clear statement by government that it intends to reduce pesticide use, perhaps leading to a complete phasing out; they felt that pesticide users, both farmers and urbanites, should be given more information on organic farming methods an environmentally-friendly alternatives;
  - education might be supported by incentives to encourage a reduction in farm pesticide use;
  - some presenters felt it important that the public be aware of the major role of pesticides and fertilizers in developing our high-quality food as well as the relatively low risk presented by the products used in agriculture;
  - good information on pesticide use should be provided to the educational system.
- Management of pesticide containers:
  - a few submissions commented that the voluntary collection of pesticide containers generally worked well although occasionally there were disputes between local authorities and the provincial government over responsibility for disposal of the collected containers;
  - some suggested that the manufacturer or distributor be required to set up a system for safe management of the containers; if they do not have a process in place to recycle their containers, they should not be allowed to market the product.

- Notification of Pesticide Use:

  - it was suggested in several submissions that under Section 151(g), the Minister should be authorized to require warning signs in public places, prior to and following the use of pesticides; such signs would provide notice of the application of a pesticide; this would be cumbersome and reservations were voiced concerning the feasibility and logistics of implementation in rural areas; more concerns were voiced about aerial spraying or roadside spraying by local authorities; if posting is to be required, thought should be given to who should be notified, by what means, and time of notification.

- Certificate of Competence:

  - some participants expressed concern that although regulations exist to ensure safety in the transportation, handling, loading, storage, and use of pesticides and fertilizers at the dealer level, there are fewer regulations governing their use at the farm level;

  - legislation should control the use and handling of fertilizers and pesticides at all levels including both the dealer and the farm level;

  - submissions advocated that everyone who uses pesticides should receive instruction on handling, application, and safety, and become certified or otherwise demonstrate competence; it was recognized that training all users would be an expensive and cumbersome process;

  - several presenters were concerned that meeting new regulations and implementing these types of programs will be expensive and that time should be given to accommodate these new demands.

PESTICIDES

Panel Comments and Recommendations

The Panel agrees that pesticides may pose a risk of harm to human health and the environment and that their use should be reduced over time. The Panel has the following recommendations in some of the specific areas of concern:

Alberta Environment should support current initiatives investigating options for alternatives to chemical pesticides. It is recognized that an important aspect of developing alternatives is education of pesticide users.

The current voluntary program for management of pesticide containers is recognized. Alberta Environment should also encourage reuse of pesticide containers and recycling of pesticide wastes.

The need for notification regarding the use of pesticides should be addressed in the regulations. In rural areas, a process should be developed to provide for advance notification of aerial applications of pesticides.

Requirements for notification in urban areas must be much stricter because of the higher density of population and the concern regarding members of the public with environmental sensitivities (high susceptibility to adverse impacts on health due to exposure to chemicals or other factors).

In recognition of the many concerns voiced regarding the potential for misapplication of pesticides and the associated potential for harmful effects, the long term objective should be to require that anyone using a pesticide have a certificate of competence. It is recognized that the level of training and expertise required varies greatly. The requirement for certificates of competence should be phased in, with the key areas of concern addressed first. Appropriate requirements must also be determined for the different types of uses.

HUMAN HEALTH

Overview of Public Comments

Health in Alberta is the responsibility of the Minister of Health. The Public Health Act and regulations impose broad responsibilities and obligations upon the local Boards of Health who are, in effect, the Minister's agents in matters of environmental health. The proposed Alberta Environmental Protection and Enhancement Act requires decision-making on public health grounds under a number of sections. The potential for conflict between the Public Health Act and the proposed Act concerned some of the presenters.

People's views about jurisdictional responsibilities regarding environmental health varied. Some requested that the legislation fully integrate health considerations into environmental protection while others strongly opposed this idea.

Generally, Alberta Environment is seen to have some responsibilities for how the environment affects human health, and there is a need for full cooperation and coordination of efforts between the respective departments.

Comments

- Waste management facilities:
  - need the prior approval of a Local Board of Health;
  - Alberta Health should be involved in assessing the health of citizens in communities surrounding an incinerator.
- Environmental Impact Assessment:
  - any projects with significant health impact must be referred to Alberta Health; clear criteria to determine this should be established;
  - EIA reports should include information on potential human health impacts.
- Interdepartmental Notification:
  - the Director should be responsible for notifying Alberta Health of any releases that may endanger human health;
  - EPOs, variances, and Reclamation Certificates involving potential human health effects should be sent to Alberta Health;
  - health units should be provided with access to Emergency Response Plans.
- Environmental Research and Monitoring:
  - Government should initiate, or continue research about, and report on the long-term effects of the unsafe disposal of hazardous waste on human health and the environment;
  - the Act must include continued monitoring of health problems, their causes, and the relationship they have to the environment; of particular importance to Alberta are petrochemical sensitivities (asthma) which can be triggered by one exposure or by a series of low-level exposures.

- Sustainable Development Co-ordinating Council:
  - wider representation from health organizations should be considered in the membership of this council.
- Objectives/Standards:
  - health issues have to be considered in developing environmental objectives and standards;
  - standards should reflect the most sensitive human health indicator;
  - health data should be given directly to the Minister of the Environment for environmental decision-making.

HUMAN HEALTH

Panel Comments and Recommendations

Jurisdictional issues between provincial government departments were raised in submissions and the Panel believes these issues must be resolved. The public was more concerned that the responsibilities for dealing with health/environment issues be fulfilled than with overlapping jurisdictions. There were, however, requests for greater involvement by Alberta Environment with respect to landfills currently under the responsibility of the Public Health Act; and concerns that the lines of authority and responsibility be clear between jurisdictions when responding to unlawful, unauthorized, or accidental releases (spills).

The Panel noted that the Canadian Environmental Protection Act includes provisions to integrate environmental and health factors at the federal level. These should be reviewed to determine if these types of provisions could be useful at the provincial level.

The Panel recommends the following:

> **As humans are part of the environment, human health must be considered in environmental decisions and included in environmental investigations, and that the legislation should be so amended.**

POLLUTER PAYS

Overview of Public Comments

Albertans want polluters to be "accountable at all costs." Environmental costs must be borne by the "polluting individual, and collectively by society." Shared responsibility must embrace financial responsibility and the legislation "should provide the structure so that environmental costs are recognized, levied and distributed appropriately."

Comments

- Penalization of polluters must include
  - the cost of disposal of a consumer product which may become solid waste; such a cost should be built into the purchase price of the product;
  - the cost of clean-up, perhaps through an insurance fee applied to certain industries;
  - the cost of reclaiming abandoned industrial sites;
  - the cost of upgrading old facilities.
- The use of economic incentives and instruments, free-market forces and/or self-regulation in the case of environmental audits or the Community Awareness and Emergency Response (C.A.E.R.) programs, as alternatives to the existing command and control mechanism were suggested. Some examples were the following:
  - the province consider the use of various "green taxes" which, if properly structured and planned, will fit into a "user-pay" concept that forces people to pay some of the hidden social and public costs associated with a resource consumptive lifestyle (e.g., commuter tax, taxes on everything that is shipped out of Alberta, i.e., regarded as non-renewable resources);
  - the "user-pay" concept be incorporated into the Act by applying surcharges or taxes on items such as tires, plastics, home heating fuel, electricity, water, etc.;
  - the price of paper be increased, or a tax put on paper to pay for de-inking plants;
  - legislative incentives to support public enthusiasm for recycling and waste reduction be provided; the idea of "recycling fund" was supported by most submissions in this area, suggesting that revenue from the fund be collected from surcharges on designated materials, or by including the costs of disposal or recycling into the product cost;
  - the idea of "cottage industries" be encouraged to reduce commuter traffic;
  - tax incentives or science and technology grants be provided to encourage industry to research new technology or improvements to current technology;
  - incentives to change gasoline-fuelled cars over to propane or electricity;
  - waste collection be provided on a "user-pay" basis, with a charge levied for each can of garbage; a similar system of charges on industrial waste to ensure that industry pays the full cost of management of their hazardous waste;

- tradeable emission rights be considered and made available to industry;

- the provincial government establish a program of economic instruments for alternative energy-efficient equipment and technology, thus reducing air pollution and providing energy security for business and the general public.

- Some of the presenters were concerned about the potential problems, when purchasing a property, of unknown previous land use, and the possibility of contamination. To avoid liability when purchasing or leasing a property the following were suggested:

  - before ownership of real estate is transferred, or possession is assumed, a disclosure certificate be signed by the seller (or lessor) to identify the existence or likely existence of the following: toxic or hazardous substances, underground tanks, prior on-site storage of hazardous materials;

  - agreements with land owners should be capable of "running with the land," that is, bind successors in title;

  - establishment of a method by which the owner can restrict the future use of the land, and this restriction be registered against the title;

  - an environmental clean-up lien be created and attached to the land title if the owner or lessor is alleged to have adversely affected the land; this lien would reimburse the Minister for clean-up cost.

- Economic incentives: Several participants suggested the Act include provisions which encourage appropriate environmental behaviour, but which do not rely solely on 'command and control' approaches of regulation and penalties.

  - incentives for environmental protection are more positive, preventative and effective than are penalties for environmental degradation that has already occurred; market-based, incentive-style encouragement to achieve environmental protection could be explored;

  - economic instruments such as tradeable emission rights, emission charges or fees, environmental or green taxes, incentives, grants, awards, and certificates of appreciation could supplement reliance on enforcement and penalties;

  - these instruments offer the possibility of achieving environmental objectives at less cost than the current approach of requiring each facility to achieve the same standard by the application of specified pollution control practices;

  - the Act should make reference to the use of economic instruments and provide the Minister with authority to adopt them.

POLLUTER PAYS

Panel Comments and Recommendations

"Environmental problems arise in market economies when private individuals and business lack incentives to take full account of the environmental consequences of their actions" (The President's Report on the Economy, Chapter 6).

The Panel believes that the principle of "polluter pays" has been included in the legislation through a number of provisions. Requirements for remedial work are addressed through the provisions for unlawful, unauthorized, and accidental releases. Provisions are included in Section 121 to allow for surcharges on materials to defray the cost of recycling. Included are strong provisions for fines and penalties. (Detailed comments regarding enforcement are included in a subsequent section.)

The Panel recommends as follows:

The Panel supports the use of security funds if there are risks of environmental damage related to the activity and suggests the expansion of circumstances where a security deposit is required. This expansion, however, should be based on appropriate criteria for the level of security required.

Levies for waste collection based on the amount of waste collected should be encouraged through cooperation with local authorities.

The Panel noted that many purchasers are undertaking voluntary environmental audits on property prior to purchase to avoid unforeseen problems with land purchases. Consideration should be given to implementing a requirement for inclusion of a warranty regarding contamination in land purchase and sale agreements. Another option would require registration of previous use of the land on land titles.

Enabling provisions should be added to allow for the use of a full range of economic instruments, as appropriate (such as tradeable allowances and emission fees), in addition to the existing "command and control" mechanisms.

Older facilities should be required to upgrade to meet new standards over a reasonable period of time. One option would be to require payment of an emission fee until the new standards are met.

ROLE OF LOCAL GOVERNMENT

Overview of Public Comments

Several sections of the draft Act have implications for local authorities, for example, Sections 13(b), 27, 30-35, 37, 123(g), 130-136, 189, and the Environmental Impact Assessment (EIA) process. Several municipalities and their umbrella associations made submissions expressing their concern, however, that the proposed Act was developed without consultation.

The submissions expressed concern about provincial infringement on areas of local authority and corporate procedures, the coordination of local and provincial enforcement activities, the cost and liability implications for municipalities, and the question of whether municipalities had authority to carry out delegated responsibilities.

Comments

- The proposed EIA process has cost implications for local authorities.
  - there could be a considerable delay in project initiation while a project goes through stages of public debate beyond those already provided for by a municipality's processes;
  - in particular, submissions noted the current 'permit to construct' allows a municipality to obtain a Local Authorities Borrowing By-law; if the permit and the by-law cannot be issued until after the Director has ruled on the Environmental Impact Assessment, this could mean a considerable increase in lead-time and a need for additional funding.
- Section 30-37 8Designation of officials:
  - submissions expressed concern with the requirement that each local authority must appoint a sufficient number of inspectors and investigators to carry out the transferred administration of the Act; such a requirement would affect municipal costs, the availability of qualified staff, and staff workloads; municipalities, especially the smaller ones, might not have the expertise or resources to carry out properly their delegated responsibilities;
  - municipalities were also concerned that because they operate facilities which come under the Act, municipally-appointed inspectors could find themselves in a strong conflict of interest position in enforcing the Act;
  - municipalities have concerns about the implications of an employee dealing with particular emergency responses such as spills of hazardous materials; it is important that emergency response plans developed under Section 33 be available to any local authority affected by the plan; furthermore, in dealing with any incident, municipal employees should be given full disclosure of the nature of the incident and its potential impact on the public.
- Section 128-137 Litter: Section 133(1), 'Liability of local authority for costs of cleaning', will take precedence over existing municipal by-laws in relation to unsightly premises, essentially rendering local standards and procedures with regard to this matter completely irrelevant. Yet recovering the costs of clean-up through taxes may be

difficult where the taxpayer and the offender are not the same party. Should the property go to a tax sale and the municipality be unable to find a purchaser, the municipality has to assume ownership and associated costs. In such an instance, municipalities wish to know whether the province will reimburse these costs in full.

- Delegation of responsibilities to local authorities: It is extremely important that specific terms and conditions related to the transfer of administrative responsibilities be spelled out so new projects and existing operations are treated fairly and uniformly across the province. Uniformity and consistency in local decision-making will be a continuing challenge. Without specific direction, the decentralization of enforcement powers may result in conflicts between municipalities with respect to pollution which crosses jurisdictional boundaries.

- Economic conditions in the local area and the implications of environmental enforcement for local industrial activities may create a situation where the intent of the legislation could be avoided. On the other hand, the strength of the system lies in the ability of a municipality to address issues from a local perspective.

- Clauses such as Section 27, 31, and 189 which permit the provincial government to withhold municipal grants do little to reassure municipalities that environmental policy will involve a sense of partnership between the province and municipal governments.

- Section 123(g) also has potential implications for local autonomy as well as financial implications. Municipalities asked if the province would transfer funds to local government to cover the cost of recycling systems.

- Presenters also pointed out that Sections 125-127, Hazardous Waste, contain no provisions for the categorization and control of hazardous waste disposal. Hazardous waste may be designated in regulations, and regulations respecting disposal may be passed, but the existing powers of municipalities to refuse acceptance of hazardous waste are not evident.

ROLE OF LOCAL GOVERNMENT

Panel Comments and Recommendations

The Panel supports the encouragement of decision-making at the local level where appropriate. This delegation of responsibility brings decision-making closer to the people concerned. Local decision-making often results in more efficient administration and lower costs.

The Panel recognizes the concerns of the municipalities regarding costs which accompany delegation of decision-making. The general concept of "equivalency" should be applied to determine whether a local authority has resources and expertise to achieve the goals of the legislation. The Panel recommends

> **that all of the provisions of the legislation be discussed with local authorities and that any decisions to delegate authority be made only with the local authority's consent.**

Consistent with this concept of cooperation and agreement with the local governments, the Panel makes the following recommendations:

> **Section 135 Environmental Protection Orders Where By-Law Exists**
>
> **Section 135 should be amended to require the inspector to notify the local authority if any property in a municipality in which a by-law is in effect is considered to be unsightly when viewed from a highway. A provision should be added to allow the local authority a reasonable period of time to enforce its by-law, after which the Director may request the local authority to enforce its by-law if action has not been taken.**

The Panel also notes the need for cooperation in the review of proposed projects. The existing referral system for subdivision approvals works well. The need for a similar referral system and public notice for development permits should be reviewed. This would have to be done through consultation with Alberta Municipal Affairs.

PROTECTED AREAS

Overview of Public Comments

The comments received about protection of representative areas suggested that protection of representative samples of natural regions and ecosystems is needed. In order to fulfil this goal, the legislation and the regulations require provisions to set aside certain parts of Alberta as environmentally protected against certain kinds of activities. Some members of the public suggested that Alberta develop its own endangered species act similar to that contained in American legislation.

Comments

- Despite the acceptance of the Brundtland Report and World Conservation Strategy recommendations, the Alberta government has no specific commitment to the priority requirement of completing a comprehensive system of protected areas.
- Protection of certain areas might be accomplished by cooperation with Recreation and Parks, with Forestry, Lands, and Wildlife, or by implementing a program such as "Buck For Wildlife" which buys land and then protects or develops it for recreational use or habitat protection. (Money comes from fishing and hunting licences.)
- Habitat enhancement projects currently underway should be continued or expanded. Farmers could be encouraged to preserve or create wildlife habitat. This could be accomplished by tax exemptions (no land tax) or incentives at the county level.

PROTECTED AREAS

Panel Comments and Recommendations

The concept of setting aside protected areas is an important aspect of sustainable development. The Panel agrees with comments made in submissions that in addition to wise use of the environment, there is a need to set aside areas representative of ecosystems where no development can take place. It is recognized that the establishment of protected areas goes beyond the jurisdiction of the Minister of Environment, an indication of the need for integration of the policy of sustainable development on a government-wide basis. The Panel believes that government action on this issue would reflect a serious government commitment to protection of the environment.

The Panel notes that Section 34(d) of the draft legislation and Section (9) of the Department of the Environment Act include provisions for protected areas on private land and that endangered species are governed by federal legislation.

DISPUTE RESOLUTION MECHANISMS

Overview of Public Comments

Environmental mediation was addressed in submissions which related to the Environmental Impact Assessment (EIA) and Approvals and Enforcement processes.

Comments

- The "EIA process should be changed from one of conflict to a mediation style process."
- Mediation "could play a key role" in the approval-granting process.
- The Minister should have the power to appoint a mediator in cases of very sensitive and controversial issues.
- The Act should include a "provision for mediation of the process of developing an EIA by a neutral party."
- The Natural Resources Conservation Board Act (NRCBA) should enable the Natural Resources Conservation Board (NRCB) to direct the environmental mediation process.
- Some comments criticized the proposed Act for not including dispute resolution mechanisms.

DISPUTE RESOLUTION MECHANISMS

Panel Comments and Recommendations

The Panel agrees that there is merit in providing alternative dispute resolution mechanisms in the legislation. The public commented specifically on the use of mediation techniques in the Environmental Impact Assessment process. The Panel also believes that the possibility of using dispute resolution mechanisms should be included in other areas of the legislation which provide for public consultation.

> **The Panel recommends that a full range of dispute resolution mechanisms be available in the legislation and not be restricted to the EIA process.**

ENVIRONMENTAL PROTECTION ORDERS

Overview of Public Comments

Many presenters found the whole issue of Environmental Protection Orders (EPOs) confusing as the Act does not provide clear criteria for when and where the EPOs should be issued or how they should be used. The lack of an appeal process for EPOs was the main criticism with respect to this issue.

Discretionary powers of the Director were questioned by participants. In Section 26 (Amendment and Cancellation of EPO) it appears "that the Director has been given the power to amend, delete, or cancel anything he chooses, with respect to an EPO," and they wondered "is this done arbitrarily or is a review of the facts entertained?"

"No right to compensation" (Section 28) concerned some presenters who were critical of the fact that the Act does not include provisions for compensation in cases where an EPO was unwarranted. They believe that "this is rather a severe provision" considering the fact that "there is no allowance for potential negligence in issuing an EPO" and they requested that Section 28 be amended accordingly.

Comments

- A list of all generic and specific provisions regarding EPOs which appear in various parts of the Act should be included under Part 1, Section 25: General Requirements of EPO, and be removed from those other parts.
- Methods and time requirements for compliance with orders and allowances of extension must be stated in order to be effective.
- Situations which may trigger the use of EPOs should be clarified.
- Penalties for non-compliance should be specified.
- The intended recipient of an EPO should be provided with advance notification.
- EPOs and their amendments should be made public.
- Participants complained that "the Act, as presently written, does not allow for any formal notice of objection to EPOs and Enforcement Orders." Therefore, "provisions should be made in the Act to formally appeal these orders."
- The Act should include a "guarantee...[that anyone] affected by any environmental decisions...[may] file a notice and be heard."
- Specific requests were made that Section 16: Notice of Objection, be amended to allow for an opportunity to submit a formal objection to EPOs issued under Sections 77, 78, 89 and 185, or Enforcement Orders under Sections 184 and 185.
- It was noted that the provision under Section 16 is too narrow in terms of who can appeal, as the specification "directly affected" may deny some people's right to appeal.
- There was also some concern expressed about the "Stay Pending Review" provision under Section 20. Three different views were presented:

- notices of objection should not suspend operations or activities while Boards of Review assess objections;
- this section should include a process for appeal of the Minister's decisions if such prevents the objection from operating as a stay;
- it should be prescribed in the regulations when a notice of objection may serve as a stay.

- It was suggested the Director should have the power to make the decision to lift the stay order.

- Under Section 27: Failure to Comply with EPO, participants commented "the Director's powers to 'take whatever action he considers necessary to affect compliance' with a protection order should be subjected to a legislative limit of reasonable actions, as opposed to an all-encompassing power." They requested that specification of circumstances under which these powers can be exercised be included in the Legislation.

- Section 77: Proactive Environmental Protection Order concerned some participants, particularly the broad powers granted to the Director to issue an EPO about a contaminant release, "notwithstanding a company's compliance with an existing approval." They said "to make an approval holder totally responsible for unforeseeable events...would be an unacceptable hardship on the approval holder."

- Some submissions expressed concern that under this section the Director may use his discretionary power and issue an EPO based on his perception that "a release may occur."
  - criteria for a decision by the Director should be clearly delineated in the regulations and the word "may" be replaced with "shall";
  - the wording "may occur" could be replaced with "is likely to occur," and "of the opinion" be replaced with "of the reasonably informed opinion."

ENVIRONMENTAL PROTECTION ORDERS

Panel Comments and Recommendations

In response to the public's comments regarding the powers of the Director in issuing environmental protection orders, the Panel makes the following recommendation:

Sections 25 - 28 Environmental Protection Orders

It is recommended that provisions be added to these sections, and other sections of the legislation as required, to provide the right to appeal when environmental protection orders are issued. The right to appeal should apply to the person to whom the order was issued and to any directly affected persons. The Minister should have the discretion to decide an appeal operate as a stay; the person to whom the order is issued should have the right to apply for a stay of the order.

Section 28 and 190 No Right to Compensation

Section 28 and 190 should be reviewed to ensure that persons subject to a wrongfully issued Environmental Protection Order or Enforcement Order, or innocent third parties may seek compensation for any loss resulting from or attributable to the issuing of the order, particularly in light of the power of cabinet to make regulations authorizing compensation (Section 213 (a)).

(See also the Panel's previous recommendations on discretion.)

ENFORCEMENT

Overview of Public Comments

A common theme was the need for stricter enforcement. Many presenters felt the current legislation was adequate but was not supported by strong, consistent, and even-handed enforcement that applied to everyone including government agencies.

Most presenters also commented that Alberta Environment would need sufficient resources, both staff and budget, and that staff must be competent and adequately trained in enforcement and legal procedures. This alone is not enough to ensure environmental protection; there must also be the political will to enforce the legislation. Presenters asked that this political commitment be reflected by reducing the level of discretionary action the proposed Act allows the Minister and the Director.

Comments

- A few submissions cautioned that enforcement not be too zealous. There is still room for consultation, cooperation, and conciliation in achieving environmental protection goals, especially for a conscientious company faced with a genuine problem; however, they stressed, harsh deterrents are needed for the blatant offender. Many presenters also saw a role for economic instruments in environmental protection.

- The law should be the same for everyone. Business, individual citizens, corporations and their executives, all levels of government and their employees should be subject to the same provisions and penalties.

- "Swift and strong action against polluters" is what the public expects from the Act. "Let's bring out laws with immediate teeth, repair the damage here and now, or bear the cost not in the future but the next day."

- Some presenters expressed the view that the provisions for $1,000,000 fines and jail terms, the availability of private prosecution, and the ability of individuals to initiate investigations do not create a situation which breeds confidence in the business community. The concern was also expressed that the Act does not provide full right to receive notice, right of appeal, and protection against self-incrimination.

- Many participants criticized the proposed system of penalties as inadequate. Present fines/penalties (jail terms) are not deterrents for companies and highly-paid executives. Presenters suggested much stiffer penalties and shutting down an offending operation; that fines and prison terms increase by a factor of 10 for a company with gross sales above $50 million per year so that much more attention would be paid to the environment. "You should be staring a million bucks in the face when you are thinking about dumping that stuff off your oil rig."

- The proposed Act treats both major environmental offences and minor violations in the same manner. The Act should allow some discretion for small operators who could be treated non-punitively. Consideration should be given to a ticketing regime to deal with minor infractions in order to increase efficiency and enforcement of the Act. Heavy fines should be limited to cases where there have been intentional and serious violations of the Act.

- Clearly defined offences: Offences should be classified into mens rea, strict liability, and absolute liability offences and it should be specified which sections fall into which categories.

- The proposed Act does not differentiate between first-time offenders and those who routinely break the law. Performance history of the person or company should be recognized. Not doing so "leaves the punishment open to political pressure, depending on the climate at the time of the offence." The public suggested that penalties for environmental violators be "based on a graduated scale and be imposed in a meaningful sense."

- Section 165 Establishment of Programs by Minister: Many presenters supported the creation of a program such as 'Crimestoppers' or the anti-poaching hotline through which the public could report environmentally detrimental activities without fear of retribution. "Make use of the public willingness to report environmental offences."

  - Some suggestions proposed a reward for information leading to a successful conviction or the receipt by the person who provides the tip, of a portion of any fine collected. The main concern was that the department respond quickly to complaints and that the complainant get follow-up information;

  - the Act could have provisions to allow workers to refuse to do anything they consider environmentally dangerous. The Act should also expressly protect from retribution, including dismissal, those who report offences or otherwise further the objectives of the Act.

- Sections 166 and 167 Application for Investigation: Section 166 should include a provision that anyone initiating a frivolous or unwarranted investigation could have costs awarded against them to compensate the party being investigated and to cover costs of the investigation.

  - application be filed with the accused as well as the Director;

  - the requirement of 'two persons' to apply be changed to one person and that 'not less than 18 years of age' be amended to 'an age of not less than 16';

  - Section 166(2) be amended to read "An application for investigation shall be in written form and accompanied by...";

  - Section 167 be amended to require the results of the investigation be made public.

- Section 168 Right of Entry: Submitters supported the concept of access to evidence but were concerned with the overly broad powers of these sections. For example, there was concern about the protection of confidential information should an investigator have access to computer records Presenters suggested access to information be restricted to that which is directly related to the investigation. Investigators should be required to show reasonable grounds.

- Section 174 Inspection: Several presenters expressed concern about the broad discretionary powers of the investigator in Section 174 and suggested limits are needed to protect confidentiality. An investigator should be required to obtain a court order or warrant in order to seize anything that might be used as evidence and that seized documents should be sealed pending a ruling by a judge as to their release.

- Section 184 Enforcement Orders by Minister: Criteria be developed on which the Minister can base a decision to shut down facilities. Other alternatives could include provision for formal objection or appeal of the enforcement order or compensation for companies in cases of enforcement orders issued to them on unreasonable grounds.

- Section 192 Injunction re: Commission of Offence: Application for an injunction be available to 'any person' not only to the Director.

- Section 193 Civil Cause of Action: A reference to the recovery of direct pecuniary loss and of all costs associated with the investigation should be included. Amendment should also expressly preserve other rights of civil action.

- Section 196 Limitation Period: Given the insidious nature of environmental damage, the two-year limitation for the initiation of a private prosecution allowed in subsection 196(b) is too short. To make this subsection parallel to 196(a), it should read, 'two years from the date the damage was discovered or ought to have been discovered'.

- Section 197 Private Prosecution: Several presenters indicated this section would be effective only if the Attorney General was not able to stay prosecution proceedings. Others suggested that, to encourage greater use of this provision, there should be funding of litigants either directly or by providing to the litigant half of any fines levied.

- Section 198 Offences: The contravention of Section 65 'New information' be added to the sections listed in 198(f) and that it be an offence to 'knowingly' provide false or misleading information.

- Section 202 Duty of Directors and Officers: Submissions suggested that this section match specifications of the Canadian Environmental Protection Act which place a clear burden on directors and officers of a company to ensure that offences are not committed and to make directors or officers liable. This section should be expanded to include government officials.

- Monitoring:

  - several presenters identified the need for an efficient and effective monitoring system to ensure that air, water, and waste effluents are minimized, that operations conform with environmental regulations and approved operating conditions, and that environmental enforcement orders are implemented; various alternatives ranging from industry self-monitoring with unannounced government spot checks to government monitoring with the costs charged back to the company were suggested;

  - all monitoring results must be easily accessible by the public, perhaps by being published in a local newspaper; in some cases, local committees could provide input into the design of the monitoring network and scrutinize monitoring results;

  - good baseline monitoring is also needed to provide data on the state of the environment and trends in environmental quality.

- Protection of environmental audits:
  - the broad powers of seizure provided under Section 174 might deter companies from conducting voluntary environmental audits if these documents might be seized and the results used against them;
  - the Act should require environmental audits perhaps as an order of the court under Section 203(1); environmental audits would allow the government and the court to assist the polluter in improving plant operation and solving the environmental problem.

ENFORCEMENT

Panel Comments and Recommendations

The Panel believes that there must be enforcement of the environmental protection legislation. Enforcement of the law is essential for credibility of the law. Enforcement must be timely, fair, firm, consistent, and non-discriminatory. Members of the public pointed out that laws are only as good as the people enforcing them and the Panel agrees that, in order for enforcement to be effective, there must be adequate resources in both staff and budget as well as the political will to carry it out. Well-qualified, competent, and experienced staff and effective and accurate monitoring are essential.

The Panel agrees with the provisions which allow for imposition of large fines where appropriate. While the Panel acknowledges that the imposition of penalties and fines is a matter which is decided by the court, the Panel believes that the severity of penalties should be commensurate with the degree of damage to the environment resulting from the offence.

The Panel heard submissions that in industries where revenues and/or profits are in the hundreds of millions of dollars per year, a one million dollar fine may not be a sufficient deterrent. The Panel also queries why some terms of imprisonment were reduced from one year to six months where, in general, most terms of imprisonment were increased.

In order to address the need for effective enforcement, the Panel makes the following recommendations for Part 11 Enforcement:

Section 165 Establishment of Programs by Minister

Provisions should be added to the legislation for "whistleblowers' protection", protection from dismissal or discipline for employees who report environmental offences committed by their employers, and for a program for reporting environmental offences similar to Crimestoppers and Report a Poacher. Adequate infrastructure and resources will have to be provided to implement these initiatives (including a toll-free telephone number).

Sections 166 - 167 Application for Investigation

The Panel supports the provisions in Section 166 and 167 requiring investigations when requested by any two persons.

Sections 168 - 183 Right of Entry and Inspection

These sections should be reviewed to address issues related to the Canadian Charter of Rights and Freedoms. A specific recommendation in this regard is that Sections 168, 174 and 175 should be amended to remove the ability to search and seize without a warrant where such entry, search or seizure is for the purposes of a prosecution.

The Panel supports the provisions in Section 183 regarding court orders to prevent interference with an investigator.

The Panel believes that an enforcement order under Section 184 of the Act suspending or cancelling an approval or ordering the stopping or shutting down of an activity or thing or compelling the cessation of construction should be appealable to a Board of Review under Section 16. The Panel recommends:

That all enforcement orders under Section 184 and 185 should be appealable.

Section 192 Injunction Re: Commission of Offence

Section 192 should be amended to allow any person, not just the Director, to seek an injunction if a person has done or is about to do anything that is or would be in contravention of the Act.

Section 193 Civil Cause of Action

It should be made clear that Section 193 does not detract from any existing common law rights of action.

Section 196 Limitation Period

Section 196(b) should be amended to be consistent with subsection (a), a private prosecution must be commenced no later than 2 years after the person initiating the private prosecution became aware or reasonably ought to have been aware of the alleged offence.

Section 197 Private Prosecution

Section 197 should be amended to provide that a private prosecution can be stayed by the Attorney General only with the consent of the court. It should also allow for the recovery of costs for private prosecutions at the discretion of the court.

Section 198 Offences

Section 198(f) should be amended to include that contravention of Section 65, relating to submission of new information respecting the release of contaminants for approved activities, is an offence.

Section 202 Duty of Directors and Officers

Section 202 should be amended to include "Notwithstanding anything in this Act or any other legislation...." at the beginning of the section.

Section 202 should be expanded to include Ministers of the Crown, Mayors, Reeves, Municipal Councillors, Commissioners, Directors under the Alberta Environmental Protection Act, and Directors of government agencies. Provisions should also be added to make such individuals and Directors and Officers of a corporation personally liable for a willful act or gross negligence that results in an adverse impact on the environment.

A duty should be imposed on the Minister to undertake random checks or spot audits of industry monitoring to determine the accuracy of the monitoring. There should be no advance notice for these checks. Criteria regarding the nature of the operation, the size of operation, and other such factors will be needed to determine how many random checks are needed annually.

Provisions should be added to encourage and provide evidentiary privilege for voluntary environmental audits. (Evidentiary privilege would mean that results of voluntary audits could not be used as evidence in prosecution of offences.)

Prosecution should be used for clearly defined offences. The criteria to define offences should include the level of liability, i.e., absolute, strict, mens rea, commensurate with the severity of the offence.

MEMBERS' BIOGRAPHICAL NOTES

Mr. Brian Evans, Q.C., M.L.A. Banff-Cochrane, Chairman, is the Chairman of the Government's Environment Caucus Committee. A native of Edmonton, he holds both a Bachelor of Arts degree and a LL.B. degree from the University of Alberta. After articling with the Edmonton law firm of Emery Jamieson, he continued with the firm as an associate and then moved to Canmore to establish the town's first full-time law practice. Mr. Evans' law practice included private practice as well as Crown Agent both federally and provincially. He is a member of both the Alberta and Canadian Bar Associations.

Prior to his election to Alberta's Legislative Assembly in 1989, Mr. Evans held positions with a number of organizations in his community including Preventive Social Services, Family and Community Support Services, the Landlord and Tenant Advisory Committee, the Kananaskis Country Citizens Advisory Committee, Chamber of Commerce, Police Commission, Lions Club, Sacred Heart Church Parish Council (President), Knights of Columbus and the Canmore Golf Association (President). He also served as a volunteer during the 1987 Big Country Summer Games and the 1988 Winter Olympics.

Mr. Evans is the Chairman of the Alberta Fish and Wildlife Advisory Committee and the Alberta Tourism Education Council (ATEC). He is also a member of three Caucus Committees, Education, Economic Affairs, and Native Affairs and serves as a Trustee of the Forum For Young Albertans.

Dr. Natalia Krawetz, Vice Chairman, is the Chief Executive Officer of the Environment Council of Alberta. She has a doctorate in Environmental Psychology and has extensive experience dealing with the social aspects of environmental issues both in the private and public sectors.

Ms. Wendy Francis is an associate lawyer with Burnet, Duckworth and Palmer in Calgary practising in the litigation department. She received her Bachelor of Science degree in Biology in 1975 from Mary Washington College, Fredericksburg, Virginia and her LL.B. from the University of Calgary in 1985. Ms. Francis serves as President for Alberta and Chairperson for the Calgary/Banff Chapter of the Canadian Parks and Wilderness Society and also sits on the national Board of Trustees of the Society. She is a panelist on the Shell Environmental Fund and serves as a volunteer with Student Legal Assistance. She is a member of the Canadian Bar Association, the Calgary Women Lawyers' Association, the Canadian Institute of Human Rights, the Sierra Club of Western Canada, and the Alberta Wilderness Association.

Mr. Lorne D. Howes has retired following extensive experience as a petroleum geologist both in the Alberta oil patch and internationally. He received his Bachelor of Science degree in 1957 from the University of Michigan. His career included positions with PanAmerican Petroleum Ltd., Sunray D-X Canada Ltd. and Canadian Reserve Oil and Gas Ltd.. In 1979, he co-founded a small oil company in Calgary with two other colleagues. The company went public in 1981 with a listing on the TSE.

Mr. Brian K. O'Ferrall is a partner with the Bennett Jones Verchere law firm of Calgary and is President of the Environmental Law Centre. He received his Bachelor of Arts degree in political science from the University of Alberta in 1967, his Bachelor of Journalism degree from Carleton University in 1968 and his LL.B. degree from the University of Alberta in 1973. Following a

career in journalism and the completion of his law degree, he articled with Ballem, McDill and MacInnes and joined Bennet Jones in 1976, becoming a partner in 1982. He has published many articles and has had extensive tribunal experience appearing before the Energy Resources Conservation Board, the Public Utilities Board, the Surface Rights Board, the Canadian Radio and Television Commission, the Tariff Board, the National Transportation Agency, the Land Compensation Board, Development Appeal Boards, the Provincial Planning Board, the City of Calgary Court of Revision, and the Civil Aviation Tribunal. His memberships in organizations include the Law Society of Alberta, the Canadian Bar Association, the Canadian Owners and Pilots Association and the American Owners and Pilots Association.

Mr. Craig Shaw operates a grain farm in central Alberta near Lacombe. He was born and raised on a large mixed farm. Following completion of a business administration degree, he travelled extensively overseas, living in New Zealand and Australia for four years. He returned to Lacombe in 1980 to operate a grain farm with his father. He was active on the Executive of the Central Alberta Alternate Energy Association and is currently past president of the Lacombe Curling Club. He has been active in farm organizations at a grassroots level and is currently president of the Alberta Pulse Growers Commission. He also sits on the boards of the Alberta Environmental Centre, the Red Deer Westerner Exhibition Association, and the Western Canada Pulse Growers Association.

Mr. Joe Smith is a farmer in the County of Barrhead. He was elected to County Council in November 1966 and served on most committees of Council and on the Board of Education. He was Reeve for nine years. He has been very active in the community and at the provincial level including serving as Chairman of the Hospital Board and Nursing Home, Chairman of the Alberta Service Board, President of the Alberta Association of Municipal Districts and Counties, Vice President of the Alberta Association of Municipal Districts and Counties, and as a member of the Yellowhead Regional Planning Commission, the Fish and Wildlife Advisory Committee, the Hazardous Waste Advisory Committee, and the Vision 2020 Advisory Committee.

Dr. Donald R. Stanley is Chairman of the Board of Stanley Technology Group Inc. and past President of the Alberta Chamber of Commerce. After receiving his Doctor of Science in environmental engineering at Harvard University, Dr. Stanley, in 1954, founded the firm which, through successive changes and growth developed into the Stanley Technology Group of Companies. Over the years he has been involved in numerous organizations including the World Health Organization's Expert Panel on Environmental Health, the Environment Council of Alberta, the Western Canada Water and Wastewater Association, the Edmonton Economic Development Authority, the Construction Industry Development Council and the University of Alberta Board of Governors. He has served as a special consultant on several international environmental engineering problems including work in Malaysia, the Philippines, Tanzania, South Korea and the Caribbean. Dr. Stanley was awarded an Honorary Degree of Doctor of Science from the University of Alberta in 1988.

APPENDIX A: GLOSSARY OF TERMS USED

Page numbers refer to Alberta Environment (Corporate & Strategic Management Division) "Economic Instruments and Environmental Protection: A Discussion Paper." (December 1990. Draft.)

Command and control (also referred to as "direct control"):

- a means of controlling pollution which involves the issuing of "a directive to individual decision-makers prohibiting them from exceeding some specified level of pollution emissions or requiring them to undertake some specific pollution abatement activity" (6).
- "compliance with direct controls is usually encouraged by the threats of fines or punishment" (7).

Market-based incentive:

- approaches to regulating pollution which involve economic measures designed to encourage individual decision-makers to choose to reduce emissions (6-7). Market-based incentives include subsidies, taxes, marketable permits and deposit-refund systems.
- Regulations are directly enforceable by means of legal measures and not through the operation of economics" (Appendix A).

Tradeable emissions permits (preferred term is "marketable permits"):

- a type of market-based incentive to pollution control where "permits to emit specified levels of pollutants per period of time are allocated to polluters who can then trade them" (Appendix A).
- "This method of pollution control can achieve the cost-minimizing allocation of abatement responsibility among firms.... As with a system of direct controls, firms are given permits to emit a specified level of pollutants per period of time. The difference is that firms that can reduce emissions further at a low cost have an incentive to do so in order to create excess permits that can be sold for profit" (14).

APPENDIX B: PROJECTS OR ACTIVITIES

1. the discharge of a contaminant into the environment;
2. exploration operations that result or may result in a surface disturbance;
3. the construction of any works for the impoundment, conveying or diversion of water;
4. the drilling, operation or reclamation of an oil and gas well and the construction, operation and reclamation of batteries and other oil and gas production and processing facilities;
5. the construction, operation or reclamation of a pipeline, transmission line or telecommunication line;
6. the opening up, operation or reclamation of a mine, pit or quarry;
7. the opening up, operation or reclamation of a waste management facility;
8. the construction, operation or reclamation of a highway, railway or aircraft landing strip;
9. the construction, operation or reclamation of an incinerator;
10. the construction, operation or reclamation of a waterworks system;
11. the construction, operation or reclamation of a waste water treatment facility;
12. the construction, operation or reclamation of a sewer or sewerage facility;
13. the construction, operation or reclamation of any facility for the control of water, air or land contamination or for the control of the quality of water, air or land;
14. the construction, operation, or reclamation of a site for subsurface disposal of solid or liquid waste;
15. the preparation of land to be used for the purpose of industrial sites or for recreational development;
16. the evacuation and removal of top soil or peat for the purpose of sale;
17. the construction, operation or reclamation of any structure forming part of a broadcasting undertaking as defined in the Broadcasting Act (Canada), including a microwave tower;
18. the conduct of examinations and surveys on land made in connection with water or the conduct of exploration in respect of water;
19. the excavation and removal of archeological findings;
20. any activity which has the potential of adversely affecting wilderness areas, ecological reserves and natural areas;

21. the application of a pesticide:
    a) into, on or over an open body of water,
    b) within 30 horizontal metres or any other distance prescribed in the regulations, of any open body of water,
    c) in forestry production on provincial Crown land,
    d) along any highway, road, railroad, pipeline, utility line or telephone line on provincial Crown land,
    e) on provincial Crown land which is subject to lease, or
    f) on any other land specified in the regulations.

22. the construction, operation or reclamation of a plant, structure, activities or thing for:
    a) the manufacture of petroleum products or natural gas products,
    b) the manufacture or processing of chemical and allied products,
    c) the manufacture of processing of pulp and paper products,
    d) the manufacture or processing of stone, clay or glass products,
    e) the manufacture or processing of cement and lime products,
    f) the manufacture or processing of fertilizer products
    g) the manufacture or processing of primary metal products,
    h) the manufacture or processing of wood or wood products,
    i) the manufacture of asphalt or ready-mixed concrete
    j) the processing of coal or oil sands,
    k) the processing of natural gas or its derivatives,
    l) the processing of food,
    m) the manufacture or processing of secondary food products, beverages or animal by-products,
    n) the generating of thermal electric power or steam,
    o) the treating of sewage,
    p) the manufacture of animal feed,
    q) seed cleaning or forage drying,
    r) the storage, treatment, processing or disposal of hazardous waste,
    s) the combustion of solid, liquid or gaseous fuels or wastes,
    t) the storing and processing of recyclable material,
    u) the storing and processing of designated material,
    v) the manufacture or use of biotechnology products, or
    w) any other industrial, manufacturing or processing purpose;

23. The disposition of public lands including agricultural leases, forest management agreements and oil and gas and coal leases.

24. Any plant, structure, thing or activity if the Director has notified in writing that the proposed plant, structure, thing or activity will be regulated.

APPENDIX C: TERMS OF REFERENCE FOR PUBLIC MEETINGS

A. Membership

(1) The Panel shall consist of the Members set out on the attached Schedule "A".

(2) The members are appointed effective October 2, 1990.

(3) The members of the Panel shall be paid remuneration and reasonable travelling and living expenses as specified in Schedule 1, Part A of the Committee Remuneration Order being Order in Council 1175/80.

(4) The term of the Panel shall be from the date herein until a final report as described in Section "D" is accepted by the Minister.

B. Terms of Reference

The Terms of Reference of the Panel shall be to

(1) hold public meetings at the locations set out on the attached Schedule "B" to provide the public of Alberta the opportunity to apprise the panel of their views on the draft of the proposed Alberta Environmental Protection and Enhancement legislation;

(2) receive and consider oral and written submissions from members of the public with respect to the proposed Alberta Environmental Protection and Enhancement legislation;

(3) prepare a report on the basis of the submissions, summarizing the oral and written submissions and making recommendations regarding the proposed Alberta Environmental Protection and Enhancement legislation, the report to be completed and delivered to the Minister no later than December 21, 1990. (Extended to January 11, 1991.)

C. Procedures

(1) Subject to the approval of the Minister, the Panel shall make rules of procedures governing the calling and conduct of meetings, and any other matters as required.

D. Reporting

(1) The Panel shall complete the public meetings and prepare its report on a timely basis consistent with the Terms of Reference.

(2) The Panel shall provide the report to the office of the Minister of the Environment.

(3) The Minister of the Environment shall make the report public in a timely fashion.

SCHEDULE "A"

PANEL MEMBERS

Mr. Brian Evans, Chair

Dr. Natalia Krawetz, Vice Chair

Dr. Donald R. Stanley

Ms. Wendy Francis

Mr. Brian K. O'Ferrall

Mr. Craig Shaw

Mr. Lorne Howes

Mr. Joe Smith

SCHEDULE "B"

LOCATIONS OF PUBLIC MEETINGS

The Panel shall hold public meetings on the proposed Alberta Environmental Protection and Enhancement legislation at the following locations:

Peace River
Grande Prairie
Fort McMurray
Bonnyville
Hinton
Edmonton
Red Deer
Calgary
Medicine Hat
Lethbridge